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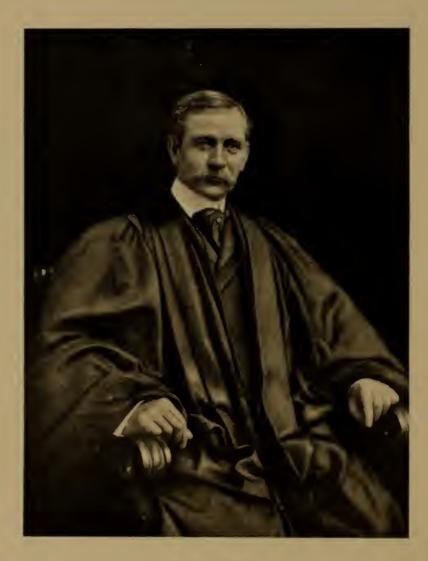




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ALDEN CHESTER.

(1848—).

Editor of this work; Justice Supreme Court since 1895.

LEGAL AND JUDICIAL HISTORY OF NEW YORK

VOLUME I

ALDEN CHESTER

EDITOR

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It has been said that "history makes haste to record great deeds but often neglects good ones."

Considering the largeness and the importance of the subject as a whole, the legal and judicial annals of the province and State of New York have received, comparatively speaking, scant attention from the historian. Material for such a history has long existed in abundance, but for the most part it is widely scattered, and even by those who have essayed to write upon it, has been more or less meagrely treated. With few notable exceptions there has been no adequate effort to review any individual phase of the subject thoroughly and comprehensively, or to make any complete history of it. The late Judge Charles P. Daly wrote a learned essay upon the state of jurisprudence during the Dutch and early English periods, leading down to and comprising a history of the early years of the court of common pleas, of which he was so long the renowned chief justice. This well known essay was originally printed as an introduction to the first volume of E. D. Smith's "Reports of the Court of Common Pleas," and afterwards was reprinted in pamphlet form and in a history of the bench and bar of New York. James Wilton Brooks' history of the same court is one covering the entire period from its beginning until its final dissolution, and is a valuable contribution to the legal history of the metropolis. Other than these two works, nearly everything that has been written and printed upon the subject has been principally in the form of monographs for introductions to various editions of law reports or of chap-

ters to histories of the city or State of New York. Without attempting to make an exhaustive list, Amasa A. Redfield, Charles A. Truax, Robert Ludlow Fowler, Wheeler H. Peckham, Benjamin B. Silliman, Adolph J. Rodenbeck, and others, may be recalled among the contemporaneous writers upon this subject. For the most part these contributions have been of a technical character. There have been some personal reminiscences of the bench and bar and some accounts of famous trials, but, generally speaking, the narrative history, either of periods or of divisions of the subject, has been a negligible quantity.

Much pertaining to the subject is embodied in the old colonial records, but there, almost without exception, it is carried in connection with the general history of the political, industrial and social foundation and development of the province and commonwealth. All the important histories of New York City and State have preserved more or less concerning the early courts and judges, but there again the matter presented has been incidental to the general historical treatment, and has in no wise been segregated as covering an independent field of investiga-Material of this character is found in the documentary collections of E. B. O'Callaghan, in the same author's "Documentary History of New York," in Berthold Fernow's "Records of New Amsterdam," in the same author's "Records of the Orphanmasters' Court of New Amsterdam," William L. Stone's "History of New York," J. R. Brodhead's "History of New York," William Dunlap's "History of New York," Werner's "Civil List" and elsewhere. The investigator also finds much of interest and value in various state papers, in many old Dutch documents, in the Van Rensselaer Bowier Manuscripts, in the "Journal of the Votes and Proceedings of the General Assembly of the Colony of New York," in Street's "Council of Revision,"

in papers published by the New York Historical Society, and in numerous other works, no complete list of which need here be presented.

In the first volume of this work the attempt has been made to record chronologically and with as much thoroughness as the limitations of a single volume has permitted, the history of the legal institutions and the administration of justice in the Colony and State of New York during their three hundred years of existence from the time of their first planting under the Dutch down to the beginning of the twentieth century. Necessarily the work of the writer has been largely that of compilation in bringing together from every available source of information whatever may have been recorded by preceding writers concerning the subject, and weaving all this divergent material into a complete, logical and consistent narrative. Nothing of this kind has ever before been essayed, and it is believed that from these pages it will be possible to have a clear conception of the character of our legal institutions, the source of their origin, and the manner in which, gradually, from one generation to another, they developed from small and crude beginnings to their present proportions.

Much space has been given to detailed consideration of the first efforts to establish courts and to fix judicial procedure and administration under the Dutch governors and the English governors who succeeded them in the seventeenth and eighteenth centuries. These pages, with their accounts of the early courts and sketches of the men who presided over them, with transcripts of many of the records of trials of those days, constitute an interesting picture of the colonial times. More than that, in the present connection they are valuable to every student, showing in what manner American jurisprudence, and the machinery

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of judicial administration as they exist in New York State today, have been developed from that early foundation, and to what extent the law and equity of to-day have been derived from the wisdom and integrity of the pioneers.

A large part of the volume has been devoted to the history of the courts and an account of the judges and other judicial officers of the colonial period. This matter has never before been brought together in a consecutive chronological narrative, and it is believed that its presentation here, in this shape, will be of enduring interest and value. During the colonial period the courts constituted a part of the political system of the province, being based first upon the king's prerogative as exercised by the arbitrary will of the governors, and subsequently being founded upon a statutory basis by legislative enactments, which, however, were subject to the approval or disapproval of the governors and the English king.

With the beginning of statehood, the courts of the common-wealth were placed upon a constitutional foundation. Their history in this respect has been exhaustively treated in the second volume of this work. Therefore, the chapters in the first volume, treating of this period, have been confined principally to a record of the annals of the courts as established by the several constitutions, and a consideration, more or less extended, of the work accomplished by them and of the careers of many of the eminent judges who have sat upon the bench during the last one hundred and twenty-five years.

The text of the first volume was almost wholly written by Mr. Lyman Horace Weeks, formerly editor of the *American Historical Magazine*, who is specially fitted for the work by reason of his many years devotion to historical research and study. He has made no effort here to be a "maker of history," for noth-

ing of romance will be found upon these pages. They reveal rather a painstaking effort to gather the facts of history from many widely scattered sources and to portray them in a truthful and interesting manner, and they embody, it is believed for the first time, anything like a comprehensive treatment of the general subject of the work.

The constitutional development of New York has been treated in a masterful way in the second volume. This is wholly the production of the pen of Mr. J. Hampden Dougherty, the well known lawyer and author. It is believed that his work is a contribution to the legal literature of the State which will not only be of great present interest but of permanent value. The scope of that volume has been carefully outlined in the introduction to it, and need not be here repeated.

Mr. Weeks has also contributed all the local monographs in the third volume except such as have been signed by others. Many matters of local occurrence but of general interest have been mentioned. If space had been afforded these monographs could have been largely amplified, for many of the local histories which have been consulted are rich in materials which could well have been drawn upon for such additional matter.

A generous number of pictures and portraits, many of them rare and difficult to procure, has been included in the work. A brief description accompanies each. It is to be regretted that many other portraits of prominent persons mentioned in the work and worthy of a place in it could not be inserted, but this could not be done without extending the bulk of the volumes to inconvenient proportions.

The critical reader should bear in mind that the writers of history have been more generous in recording the deeds of warriors and statesmen than those of lawyers and jurists, and, there-

fore, that the preparation of this work, covering a comparatively new field, has not been without its difficulties. History made upon the field of battle, in legislative halls and in executive chambers, may be more attractive to the general reader than such as is here recorded. But it is hoped that the subject of these volumes and the method of its treatment may not be without permanent value and interest to all who have faith in our institutions, and who believe that the security of them all rests upon the integrity of our courts and the stability of our judicial system.

ALDEN CHESTER.

Albany, N. Y., October, 1910.

CHAPTER I

THE PLANTING OF DUTCH INSTITUTIONS



CHAPTER I

THE PLANTING OF DUTCH INSTITUTIONS

1609-1644

HENRY HUDSON'S DISCOVERY OF MANHATTAN ISLAND, ITS BAY AND ITS RIVERS—THE DUTCH COLONIZATION—CHARTER OF THE WEST INDIA COMPANY—CORPORATE ADMINISTRATION AND JUDICIAL PROCEDURE FORMALLY ESTABLISHED UNDER PETER MINUIT—INSTITUTION OF THE PATROON SYSTEM—THE PATROON COURTS, JUDICIAL POWERS OF THE PATROONS AND THEIR METHODS OF ADMINISTERING THE LAW.

Beginning with the opening years of the seventeenth century, the Dutch Republic for more than six decades maintained commercial and civic supremacy on the island of Manhattan and contiguous territory. Although this supremacy was academically disputed by the English from time to time, and was threatened by the aggressive New Englanders of Massachusetts and Connecticut, it continued without being seriously disturbed until, by the English seizure in 1664 and subsequently the terms of the treaty of Westminster between England and Holland in 1674. New Amsterdam was finally and forever wrested from the possession of its founders. In the beginning many Dutch institutions were established and others were gradually planted, but legal and judicial procedure were slow in taking form. For fully one-half of the period of Dutch occupation nothing bearing resemblance to real government existed. There was no thought, indeed there was neither necessity nor disposition, to establish

courts or to exercise any legal form of authority. The settlements were merely of temporary character, nothing more than small trading posts. In a general way the pioneers held themselves amenable to the law of the home country, but broadly speaking they were a law unto themselves. Wholly dominated by passion for adventure and trading, they did not even dream of laying the foundations for a future empire or state.

With the advent of the West India Company in 1621, began a semblance of legal control. In the charter of that company certain powers were granted, and these, asserted tentatively at first, gradually broadened in scope and developed in importance as the colony grew in size and diversified interests. During the first years of the West India Company there was little exercise of legal restraints except by the arbitrary will of the successive directors. But with the introduction of the patroon system, and more especially with the advent of Director General Stuyvesant, began the real legal and judicial history of the Colony, Province and State. Before the arrival of the English and the alienation of the colony from the Dutch, courts had been fully established and legal procedures adopted, based on the Dutch law of the mother country. Notwithstanding all this was set aside by the newcomers and English forms substituted, the impress of the Dutch period in these respects has never wholly disappeared, but has persisted in many ways to the present day.

Clearly to understand the Dutch legal system as imposed upon this colony, it becomes necessary to consider the history of the Dutch discovery and settlement of Manhattan and the evolution of the trading posts into communities of civic importance. That Verazzano in 1524 entered the bay enclosed by Manhattan, Staten, and Long Island, and that Gomez in the following years sailed these waters, is now accepted as well established history;

and some students of the period will always hold to the not entirely nebulous theory that in the latter part of the sixteenth century Holland fishermen in the employ of a Greenland company, as well as occasional Spanish, French and Portuguese sailors, were in the habit of resorting to this region for shelter during the winter months.¹

However that may have been, it remained for Henry Hudson, the intrepid Englishman, sailing in the employ of the Dutch East India Company, on the historical vessel Halve Mane (Half Moon), in September, 1609, to discover or rediscover the noble river which ever since has borne his name, and the island of Manhattan with its adjacent territory. He first drew European attention to this part of the new world, pointed out the location as an advantageous place for trading posts with the Indians, and opened the way for the Dutch Republic to lay claim to unappropriated lands, vast in extent and holding incalculable possibilities of wealth. The territory to which the Dutch asserted title by virtue of Hudson's discovery extended along the eastern shores of the continent, from Delaware Bay on the south to Cape Cod on the northeast, and the great river of Canada on the north; inland it ranged indefinitely, its bounds naturally being unmarked and limited only by the enterprise of future explorers. This wide land never came completely under the control of the Dutch, but on Manhattan Island, at the mouth of the Hudson River, the adventurers from Holland eventually established a community which, although lost to them after a few years, has always retained in its institutions much of its fundamental Dutch character.

The age in which lived Hudson and his successors in exploration, was one of big enterprise in finding and developing the

I. "History of New York City," by William L. Stone.

resources of unknown countries throughout the world. All the powerful nations of Europe,-England, Holland, Spain, Portugal, France-were reaching out after new lands, eager for the wealth expected to come therefrom. Particularly at the time when Hudson made his discovery, the Dutch, nationally and individually, were hungering for riches more than ever before. After upward of forty years of warfare, Holland, by the treaty of Antwerp in 1609, establishing the twelve years' truce, had just won for itself substantial independence from the kingdom of Spain. Still the nation was not fully assured of fixed and lasting security; apprehension lest other aggression from strong neighbors might come at any time, continued to hold the public mind. Even more than before, the people were alert to the necessity of devising other means than they then had to enrich themselves and to prepare, so far as wealth might prepare, in possible future contingencies, for the national defense.

At this opportune moment Henry Hudson brought to Europe and to his employers in Amsterdam the report of his landfall. Under the circumstances the discovery must have seemed to them well-nigh providential when they contemplated the enormous possibilities therein. Naturally the idea that this land across the Atlantic would be a mine of almost unlimited wealth at once impressed them, for, in common with the rest of Europe, they were firm in the belief that the American continent was a true Golconda. Despite this, however, they were somewhat slow in initiating plans to fix a firm hold upon the territory.

For the purpose of exploiting and developing the regions that were then being brought to light in various parts of the world, great monopolies holding charters of the broadest character had been conceived. Such, among others, was the Dutch East India Company, which had been in existence since 1602. The

charter of this company granted the privilege of trading only in the East Indies and on the eastern coast of Asia and Africa. By reason of those limitations that corporation was not in position to take advantage of the good fortune of Hudson, who had been sent out not to make discoveries in the west, but, if possible, to find a passage to the east through the waters north of the American continent. Nevertheless, private individuals were quick to realize that profits might be reaped in the way of commerce with this new country, even if nothing more should come from it. Almost immediately upon the return of Hudson, trading was inaugurated between Holland and America, and gradually this grew to considerable proportions. For several years in succession, one or more ships were annually dispatched across the Atlantic, and from these ventures accrued a profit that was exceedingly gratifying to their promoters.

In 1612, among the early navigators to Manhattan Island and vicinity, two were particularly prominent. These were Captain Hendrick Corstiaensen, or Christiaensen, and Captain Adriaen Block. So successful were they in their trading with the Indians that in the following year they made another voyage together. Captain Christiaensen spent the winter on Manhattan, and had a redoubt on the lower end of the island. He explored the Hudson River as far as the head of navigation, and on Castle Island, on the west side of the river, a little below the later site of the city of Albany, he built a fort—the first stronghold of the Dutch on the continent. Captain Block explored the East River, and also sailed eastward through Long Island Sound, Block Island, in those waters, in modern times commemorating his achievement.

When Adriaen Block appeared before the authorities at the Hague after his return from this expedition in 1614, the reports

that he presented, fortified also with his map of the region which he and Christiaensen had so industriously investigated,2 the interest of the Dutch was more than ever stimulated to carry on trading with the western land upon a larger and more ambitious scale. In March, 1614, previous to the return of Block, the States General had published a decree in the form of a "General Charter for Those who discovered New Passages, Havens, Countries, or Places." This charter, of sweeping character, was calculated to encourage enterprise, and it gave handsome monopolies of trade in such countries as might be found by trading ships.3 When Block arrived he entered, under the provisions of the decree, a claim for himself and the merchants he represented. On October 11, 1614, the States General granted to him and his associates a charter covering the privilege of trading in the land which he had explored, for a period of three years from the following first of January. In this charter the name of New Netherland was first applied to this portion of the American continent. A. translation of the charter is herewith given:

"The STATES GENERAL of the United Netherlands, to all to whom these presents shall come, Greeting.

"Whereas, Gerrit Jacobz Witssen, antient Burgomaster of the City of Amsterdam, Jonas Witssen, Simon Morrissen, owners of the ship named the Little Fox whereof Jan de With has been Skipper; Hans Hongers, Paulus Pelgrom, Lambrecht van Tweehuyzen, owners of the two ships named the Tiger and the Fortune, whereof Adriaen Block and Hendrick Christiaenssen were Skippers; Arnolt van Lybergen, Wessel Schenck, Hans Claessen, and Berent Sweertssen, owners of the Ship named the Nightingale, whereof Thys Volckertssen was Skipper, Merchants of the aforesaid city of Amsterdam; and Peter Clementssen Brouwer, Jan Clementssen Kies, and Cornelius Volckertssen, Merchants of the city of Hoorn, owners of the Ship called the Fortuyn, whereof

^{2. &}quot;The Figurative Map."
3. "Documents Relative to the Colonial History of the State of New York, by E. B. O'Callaghan, M. D., LL.D., vol. I, p. 5.

Cornelis Jacobssen May was Skipper, all now associated in one Company, have respectfully represented to us, that they, the petitioners, after great expenses and damages by loss of ships and other dangers, had, during the present year, discovered and found with the above named five ships certain New Lands situate in America, between New France and Virginia, the Seacoasts whereof lie between forty and forty-five degrees of Latitude, and now called New Netherland: And whereas We did, in the month of March last, for the promotion and increase of Commerce, cause to be published a certain General Consent and Charter setting forth, that whosoever should thereafter discover new havens, lands, places or passages, might frequent, or cause to be frequented, for four voyages, such newly discovered and found places, passages, havens, or lands, to the exclusion of all others from visiting or frequenting the same from the United Netherlands, until the said first discoveries and finders shall, themselves, have completed the said four voyages, or caused the same to be done within the time prescribed for that purpose, under the penalties expressed in the said Octroy &c, they request that we would accord to them due Act of the aforesaid Octroy in the usual form:

"Which being considered, We, therefore, in Our Assembly having heard the pertinent Report of the Petitioners, relative to the discoveries and finding of the said new Countries between the above named limits and degrees, and also of their adventures, have consented and granted, and by these presents do consent and grant, to the said Petitioners now united into one Company, that they shall be privileged exclusively to frequent, or cause to be visited, the above newly discovered lands, situate In America between New France and Virginia, whereof the Seacoasts lie between the fortieth and forty-fifth degree of Latitude, now named New Netherland, as can be seen by a Figurative Map hereunto annexed, and that for four voyages within the term of three Years, commencing the first of January, Sixteen hundred and fifteen next ensuing, or sooner, without it being permitted to any other person from the United Netherlands to sail to, navigate, or frequent the said newly discovered lands, havens, or places, either directly or indirectly, within the said three Years, on pain of Confiscation of the vessel and Cargo wherewith infraction hereof shall be attempted, and a fine of Fifty thousand Netherland Ducats for the benefit of said discoverers or finders; provided, nevertheless, that by these presents we do not intend to prejudice or diminish any of our former grants or Charters; And it is also Our intention, that if any disputes or differences arise from these Our Concessions, they shall be decided by Ourselves.

"We therefore expressly command all Governors, Justices, Officers, Magistrates, and inhabitants of the aforesaid United Countries, that they allow the said Company peacefully and quietly to enjoy the whole bene-

fit of this our Grant and consent, ceasing all contradictions and obstacles to the contrary. For such we have found to appertain to the public service. Given under Our Seal, paraph and signature of our Secretary at the Hague the xith of October, 1614."

Without delay the New Netherland Company proceeded to exercise, to the fullest extent, the opportunities granted by this charter, and its members appear to have profited well thereby. Upon the expiration of the period of the charter, January I, 1618, the company was able to secure a renewal for the reason that the financial success which had attended the venture had excited the interest of others, who now demanded that this exclusive monopoly should no longer be permitted, but that others should be admitted to the privilege of sending ships thither. From that time on, the members of the company, as individual merchants, were compelled to compete with rivals working like themselves under special licenses.

Thus affairs went on for three years. Gradually out of these intermittent ventures the seed of a stable and permanent colonization on Manhattan Island was planted, and when the time arrived for the formal establishment of Dutch authority over this territory, the enterprise was along commercial lines, as had been the trading which had preceded it. The metropolis of the western hemisphere thus had its origin and its early development in the pursuit of commerce. An American historian has well said:

"Adventure brought men to Virginia; politics and religion to New England; philanthropy to Georgia; but New York was founded by trade and for trade and for nothing else. The settlement on the island of Manhattan was due to the active spirit of Dutch commerce."5

Cabot Lodge, p. 285.

[&]quot;Documents Relative to the Colonial History of the State of New 4. "Documents Relative to the Colonial History of the State of New York," vol. I, p. 11.
5. "A Short History of the English Colonies in America," by Henry

On the same point, another historian treating of the Dutch period of the history of New York has similarly said:

"Among the causes which gave birth to the province of New Netherland and stimulated the industry of its citizens, none are so marked as the desire of gain. Religious persecutions peopled New England and Virginia. Colonists were driven to the inhospitable coasts of the former by the prelates; to the fertile bottoms of the latter by the Roundheads. But neither religious nor political persecutions stimulated in any way the settlement of America by the Dutch. Trade was their great aim, and edicts and ordinances for its regulation, especially with the Indians, entered largely into their legislation."

Then the West India Company came forward. To derive financial profit from the settlement, rather than to create a new province for the advancement of social prosperity and political principles, was the aim of this company, as had been that of its predecessors. The members of the Company were merchants rather than statesmen. As far back as 1604, William Usselinx had begun an effort to secure a Holland charter for a strong financial corporation which should carry on the work of taking from Spain her fleets and her possessions in the American hemisphere. It was not, however, until 1618 that this project was seriously considered by the States General, and three years later, June 3, 1621, the charter of the Dutch West India Company, which appears to have been an outcome of the plans and agitation of Usselinx, was finally signed. This corporation had a capitalization of seven millions of florins (\$2,800,000), and its control was divided between five chambers which were representative of the large cities of Holland. The Chamber of Amsterdam having the heaviest subscribers to the Company, had particular authority over the New Netherland Colony. To a College or Assembly of Nineteen-eighteen delegates from the five cham-

^{6. &}quot;History of New Netherland", by E. B. O'Callaghan, M. D., LL.D., vol. II, p. 338.

bers and a representative of the States General,—sitting in Amsterdam, was given executive control and full authority in the management of the affairs of the Company.

Under the terms of this charter, which was granted for a period of twenty-four years beginning with July 1, 1621, the company was permitted, "to the exclusion of all other inhabitants or association of merchants within the bounds of the United Provinces," to send ships for trade to the countries of America and Africa bordering on the Atlantic Ocean, and those also of America on the side of the Pacific. Article second of the charter provided as follows for the exercise of authority by the Company within the regions thus carefully defined:

"That moreover, the aforesaid Company may, in Our name and authority, within the limits herein before prescribed, make contracts, engagements and alliances, with the princes and natives of the countries comprehended therein, and also build any forts and fortifications there, to appoint and discharge governors, people for war, and officers of justice, and other public officers, for the preservation of the places, keeping good order, police, and justice, and in like manner for the promoting of trade."

Such, then, was the body to which reverted, by charter rights, the possessions in the new world which had fallen to the citizens of the Dutch Republic by the discovery and exploration of Hudson, and by the trading voyages of Christiaensen, Block, and other enterprising skippers. New Netherland was henceforth to be governed by an association of merchants to whom belonged many sovereign powers, a sort of *imperium in imperio*. It was rather a republic within a republic, the one strictly commercial in its aims, yet endowed with important political and civil functions;

^{7.} For full text of this charter see "History of New Netherland," by E. B. O'Callaghan, M. D., LL. D., vol. I, p. 399; also "Historical Collections: consisting of State Papers and other Authentic Documents," by Ebenezer Hazard, vol. I, p. 121.

the other strictly the supreme civil power, but knowing that its very life depended upon the commercial activity of its people, and therefore ever ready to stimulate such activity by the grant of the most extraordinary privileges and prerogatives.⁸

Not until 1623 did the West India Company complete its Then the Amsterdam Chamber began to take organization. measures to settle New Netherland, and a shipload of colonists was sent out. Cornelis Jacobsen Mey, of Hoorn, was captain of this ship, which was appropriately christened the New Netherland, and he was also appointed to be director or governor of the settlement, and to have a general survey of the whole expedition and the plantation in America. With thirty families he sailed from the Texel in March, 1623, and arrived at Manhattan Island early in the month of May. Some of the colonists remained on Manhattan; others went up the North River and built Fort Orange, where afterward was the city of Albany; others settled on the South River, and founded Fort Nassau, near where Gloucester, in New Jersey, was built in later years; a few established themselves across the East River, and founded Breucklelen and Wall-bogt; two families went up the Fresh River (Connecticut) and began to build Fort Good Hope, on the future site of the city of Hartford. The administration of Mey lasted only a year, and in 1624 he was succeeded by Captain Willem Verhulst who, in turn, remained at the head of the settlement for one year, his term of service coming to an end with the close of 1625.

Concerning Director Mey and Director Verhulst, history has had very little to say. Whether during these two years any provision was made for the administration of justice has never been

^{8. &}quot;Leslie's History of the Greater New York," by Daniel Van Pelt, vol. I, p. 12.

determined. The probability is that the colonists were altogether too much occupied in establishing themselves in their new home to trouble themselves with any thought of organizing a judicial tribunal. Wessenaer, in his "Historia van Europa", published in Amsterdam, 1621-1632, gives us the only contemporary Dutch account of events in America at this time. A single paragraph from that work indicates the spirit in which it was proposed to govern the colony:

"That being Freemen, they be settled there on a free tenure; that all they work for and gain be their's to dispose of and to sell it according to their pleasure; that whoever is placed over them as Commander act as their Father, not as their Executioner, leading them with a gentle hand; for whoever rules them as a Friend and Associate will be beloved by them, as he who will order them as a superior will subvert and nullify every thing; yea, they will excite against him the neighboring provinces to which they will fly. 'Tis better to rule by love and friendship than by force."10

Very soon the colony began to assume importance in the eyes of its promoters in Holland, who thereupon determined that more energetic measures should be taken to care for it and to enlarge and develop the interests of the company. To that end the office of director general of New Netherland was constituted, and Peter Minuit was first appointed to it. The director general sailed from Amsterdam in the ship Het Meetje (The Little Sea Mew), December 19, 1625, but did not arrive before Manhattan Island until May 4, 1626.

With Minuit was the commencement of definite forms of corporate administration and judicial precedure in New Netherland. He brought with him the complete plan which had been determined upon for the government of the colony by the direc-

^{9. &}quot;Documentary History of the State of New York", by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 19. 10. Ibid., vol. III, p. 24.

tors of the West India Company. According to this plan, the director general was to be advised by a council of five, who were also to exercise judiciary functions, sitting as a court for the trial of offenses. In fact, they had supreme executive and legislative authority in the colony. Their power of punishment, however, did not go beyond the imposition of a fine, and it was provided that all capital cases should be transferred to the courts of the mother country.

"The director general and his council were invested with all powers, judicial, legislative, and executive, subject, some supposed, to appeal to Holland; but the will of the company expressed in their instructions, or declared in their marine or military ordinances, was to be the law of New Netherland, excepting in cases not especially provided for, when the Roman Law, the imperial statutes of Charles V., the edicts, resolutions and customs of Fatherland, were to be received as the paramount rule of action."

"It was also the tribunal for the trial of whatever civil and criminal cases might arise, and all prosecutions before it were instituted and conducted by an officer called *Schout Fiscaal*, whose duties were equivalent to those performed among us by a sheriff and an attorney-general."

"The Council there administrated Justice in criminal matters as far as imposting fines (boet-straffe), but not as far as capital punishment. Should it happen that anyone deserve that, he must be sent to Holland with his sentence." ¹³

Next in authority to the director general and council was the chief commissary, or *koopman*, who was also the bookkeeper of the company, and acted as secretary of the province. He appears to have been the person best educated for the proper performance of his particular functions, supplementing especially the lack of legal knowledge apt to characterize the council members. Finally, there was a *schout*, or *schout-fiscal*, an officer of ancient Dutch distinction.

^{11. &}quot;History of New Netherland", by E. B. O'Callaghan, M. D., LL.D., vol. I, p. 90.

^{13.} Wassenaer, in "The Documentary History of the State of New York", Edition of 1850, vol. III, p. 43.

"In every tribunal there is a *schout* or sheriff, who convenes the judges, and demands from them justice for the litigating parties: for the word "schout" is derived from schuld, debt, and he is so denominated because he is the person who recovers or demands common debts, according to Grotius. The right of the sovereign in criminal cases, is sustained before the court by the advocate fiscal or attorney general."

From the beginning the schout-fiscal of New Netherland was the important judicial officer. He had no voice or vote in the council, but was privileged to sit in that body when questions arose relating to finance, justice, and police, giving his opinion when asked.

"He was strictly forbidden to accept presents, or gifts, from any person whatsover; and had to content himself with the civil fines and penalties adjudged to him and such part of the criminal fines and confiscated wages of the company's servants, as the director and council, after prosecution, might allow. He was not to have any part, however, of captured prizes or confiscated goods."

The duties of this official have been particularly enumerated by a New York historian, as follows:

"He was charged specially with enforcing and maintaining the placards, ordinances, resolutions and military regulations, of the High Mightinesses, the States General, and protecting the rights, domains and jurisdiction of the company, and executing their orders as well in as out of court, without favor or respect to individuals; he was bound to superintend all prosecutions and suits, but could not undertake any action on behalf of the company, except by order of the council; nor arraign or arrest any person upon a criminal charge, unless upon information previously received, or unless he caught him in flagrante delicto. In taking information he was bound to note as well those points which made for the person, as those which supported the charge against him, and, after trial, he was to see to the proper and faithful execution of the sentence, pronounced by the judges, who, in indictments carrying with them loss of life and property, were not to be less than five in number. He was,

^{14.} Van Leeuwen's "Commentaries on Roman Law."
15. "History of New Netherland", by E. B. O'Callaghan, M. D., LL.D., vol. I, p. 102.

moreover, specially obliged to attend to the commissions arriving from the company's outposts, and to vessels arriving from, or leaving for Holland, to inspect their papers, and superintend the loading and discharging of their cargoes, so that smuggling might be prevented; and all goods introduced, except in accordance to the company's regulations, were at once to be confiscated. He was to transmit to the directors in Holland, copies of all informations taken by him, as well as of all sentences pronounced by the court; and no person was to be kept long in prison at the expense of the company, without special cause, but all were to be prosecuted as expeditiously as possible before the Director and council."

Minuit's council of five consisted of Peter Bylvelt, Jacobs Elbertsen Wissinck, Jan Janzzen Brouwer, Simon Dircksen Pos and Reynert Harmenssen. Jan Lampo was the first schout-fiscal, being succeeded in 1631 by Coenraed Notelman. During the first two years, Isaac De Rasieres was the koopman and secretary, and was succeeded by Jan Van Remund, who had Lenaert Cole as assistant.

Under the management of Minuit, the colony gradually assumed importance, especially from the commercial point of view, but trade continued to be principally confined to securing furs from the Indians. In other respects the plantation did not develop fast enough to suit its Holland promoters. Accordingly plans for the broadening of the enterprise and for a more general settlement were taken under consideration by the Assembly of Nineteen of the West India Company. The necessity of inducing adventurers to leave Holland and make homes in the new world was recognized as becoming more and more pressing, and various schemes were considered to accomplish the end of founding stable communities in the territory controlled by the company.

"But as the land, in many places being full of weeds and wild pro-

^{16. &}quot;History of New Netherland", by E. B. O'Callaghan, M. D., LL.D., vol. I, p. 102.

ductions, could not be properly cultivated in consequence of the scantiness of the population, the said Lords Directors of the West India Company, the better to people their lands & to bring the country to produce more abundantly, resolved to grant divers Privileges, Freedoms and Exemptions to all Patrons, Masters or Individuals who should plant any Colonies and cattle in New Netherland, and they accordingly have constituted and published in print these following exemptions, to afford better encouragement and infuse greater zeal into whomsoever should be inclined to reside and plant his Colonie in New Netherland."17

Previous to that time, a plan of settlement had been successfully tried in Brazil, which was now passing into the possession of the West India Company. According to the historian Southey:

"It had then become of sufficient importance to obtain some consideration at court, and, in order to forward its colonization, the same plan was adopted which had succeeded so well in Madeira and the Azores, that of dividing it into hereditary captaincies, and granting them to such persons as were willing to embark adequate means in the adventure, with powers of jurisdiction both civil and criminal, so extensive as to be in fact unlimited."18

In that brief outline may be seen the model for the patroonships which were now established for New Netherland. It was in 1629 that the Assembly of Nineteen, with the approbation of the States General, published a Charter of Privileges and Exemptions which was addressed only to the "members of the company", even as the captaincies had been granted only to favorites at the Portuguese court, although the restriction in the former case was a more reasonable one than in the latter.

"Such members of the said Company shall be acknowledged Patroons of New Netherland who shall, within the space of four years next after they have given notice to any of the Chambers of the Company here, or to the Commander or Council there, undertake to plant a Colonie there of fifty souls, upwards of fifteen years old."

^{17. &}quot;Documentary History of the State of New York", ed. 1850, vol. III, p. 48.
18. "History of Brazil", by Robert Southey, vol. I, p. 41.

Large privileges were granted to these patroons by which they might secure extensive tracts of land with rights of hunting, fishing, pursuing agriculture, and trafficing generally along the coast, but they were expressly restricted from engaging in the lucrative trade in furs, that being specifically reserved by the company. Particularly they were invested with the feudal privilege of manorial lords like those of the lordships and seigneuries of Europe,—an introduction of the old feudal system into the new world. They were authorized to erect courts of justice, and two articles in their charters were especially indicative of the judicial powers thereby granted. Article VI reads:

"They shall forever possess * * * as also the chief command and lower jurisdictions. * * * And in case anyone should in time prosper so much as to found one or more cities, he shall have power and authority to establish officers and magistrates there, and to make use of the title of his Colonie, according to his pleasure."

Article IX of the charter provided:

"Those who shall send persons over to settle Colonies, shall furnish them with proper instructions in order that they may be ruled and governed conformably to the rule of government made, or to be made, by the Board of the Nineteen, as well in the political as in the judicial government." ¹²⁹

The general character of the patroon courts which were established under this charter, the judicial powers which were vested in the patroons, or their agents, and the methods of administration, have been exhaustively set forth by that eminent historian of the early Dutch period of New York, E. B. O'Callaghan.

^{19.} For the text of this charter in full see "Documents Relative to the Colonial History of the State of New York", vol. II, pp. 553-557; also "History of New Netherland", by E. B. O'Callaghan, M. D., LL.D., vol. I, p. 112.

"Invested as well by the Roman law, as by the charter, with the chief command and lower jurisdiction, the Patroon became empowered to administer civil and criminal justice, in person, or by deputy, within his colonie; to appoint local officers and magistrates; to erect courts, and to take cognizance of all crimes committed within his limits; to keep a gallows, if such were required, for the execution of malefactors, subject, however, to the restriction that if such gallows happened, by any accident, to fall, pending an execution, a new one could not be erected, unless for the purpose of hanging another criminal. The right to inflict punishments of minor severity was necessarily included in that which authorized capital convictions, and accordingly we find various instances throughout the record of the local court, of persons who had, by breaking the law, rendered themselves dangerous to society, or obnoxious to the authorities, having been banished from the colonie, or condemned to corporal chastisement, fine or imprisonment, according to the grade of their offense.

"In civil cases, all disputes between man and man, whether relating to contracts, titles, possessions or boundaries; injuries to property, person or character; claims for rent, and all other demands between the Patroon and his tenants, were also investigated and decided by these courts; from the judgment of which, in matters affecting life and limb, and in suits where the sum in litigation exceeded twenty dollars, appeals lay to the Director-general and Council at Fort Amsterdam. But the local authorities, it must be added, were so jealous of this privilege that they obliged the colonists, on settling within their jurisdiction, to promise not to appeal from any sentence of the local tribunal.

"The laws in force here were, as in other sections of New Netherland, the civil code, the enactments of the States General, the ordinances of the West India Company, and of the Director-general and council, when properly published within the colonie, and such rules and regulations as the Patroon and his co-directors, or the local authorities might establish and enact.

"The government was vested in a general court which exercised executive, legislative, or municipal, and judicial functions, and which was composed of two commissaries (gecommit teerden), two councillors, styled indiscriminately by raets-persoonen, gerechts-persoonen, or raedts-vrienden, or schepenen, and who answered to modern justices of the peace. Adjoined to this court were a colonial secretary, a sheriff, or schout-fiscaal and a gerecht-bode, court messenger, or constable. Each of these received a small compensation, either in the shape of a fixed salary or fees; the commissaries and magistrates fifty, one hundred, or two hundred guilders annually, according to their standing; the secretary one hundred guilders; and the court messenger one hundred and fifty, with the addition of trifling fees for the transcript and service of papers. The

magistrates of the colonie held office for a year, the court appointing their successors from among the other settlers, or continuing those already in office, at the expiration of their term of service, as it deemed proper.

"The most important functionary attached to this government, was, as throughout the other part of the country, the schout-fiscaal, who, in discharge of his public functions, was bound by instructions received from the Patroon and co-directors, similar in tenor to those given to the same officer at the Manhattans. No man in the colonie was to be subject to loss of life or property unless by the sentence of a court composed of five persons, and all who were under accusation were entitled to a speedy and impartial trial. The public Prosecutor was particularly enjoined not to receive persents or bribes, nor to be interested in trade or commerce, either directly or indirectly; and in order that he might be attentive to the performance of his duties, and thoroughly independent, he was secured a fixed salary, a free house, and all fines amounting to ten guilders (\$4) or under, besides the third part of all forfeitures and amendes over that sum, were his perquisites."²⁰

Several directors of the West India Company took prompt advantage of this Charter of Freedoms and Exemptions. First among them were Samuel Godyn and Samuel Bloemmart, who secured land on the shores of Delaware Bay. Killiaen Van Rensselaer obtained territory on both banks of the upper Hudson: this he erected into the manorship of Rensselaerwyck, which in subsequent years became famous. Michael Paauw, another director, became proprietor of property on Staten Island and on the New Jersey shore of the Hudson opposite Manhattan. Subsequently others,—Cornelis Melyn, Adriaen Van der Donck, Meyndert Meyndertse Van Keren, Hendrick Van der Capelle and Cornelis Van Werkhoven—followed their example, and established patroonships elsewhere in the neighborhood of Manhattan.

Of all these patroonships, that of Rensselaerwyck alone assumed prominence and power. Its affairs were directed by men

^{20. &}quot;History of New Netherland", by E. B. O'Callaghan, M. D., LL.D., vol. I, pp. 320-332.

of ability, and among its officials was one at least who subsequently became distinguished at New Amsterdam in the participation in the general affairs of New Netherland. In 1632 a juidicial system consisting of a schout and a court of schepens was laid out for Rensselaerwyck, but it was two years before the court was really set up. It was the first local court established in New Netherland. The first schout was Jacob Albertsen Planck; after him in that office were Adriaen Van der Donck, Nicolas Coorn and Gerard Swart. Arendt van Curler, or Corlaer, was the commissary general, or superintendent, and he was also the colonial secretary until 1642, being succeeded in that office by Anthony De Hooges. Dirck Van Hamel was also secretary of the colony. Among the councillors or schepens at various times were Brant Peelen, Gerrit Theusze De Reux or Reus, Cornelis Anthonisz Van Schlick, Pieter Cornelis Van Munnicksen, Marinus Adriaenz or Maryn Adriaensen, Laurens Laurenz, Goosen Gerritsz, Rutger Jacobz, Jan Van Twiller, Gerrit Vatrick, Jan Baptist Van Rensselaer and Abraham Staas or Staets, who was president of the council.

Most of the offenses with which these officials had to deal were of minor character. Although the exercise of the right of capital punishment was within their province, it does not appear from the records that they were often called upon to proceed to such an extent of correction. O'Callaghan²¹ speaks of "the hangman of the colony." A reference to this statement appears in a list of the settlers of the colony from 1630 to 1658, which accompanies the Van Rensselaer manuscript:²²

"Jan de Neger (the negro), is credited in 1646 with £35 advanced by him for clothes which he was to receive in the service of the patroon,

^{21. &}quot;History of New Netherland", vol. I, pp. 320-441. 22. "Van Rensselaer Bowier Manuscripts", p. 835.

and in 1646 or 1647, with £38 Voor dat hij hem heeft Laetten begruijcken tot scherp Rechter, ter executie van Justitie, over den misdadiger Wolf Nijssen (for having consented to act as executioner to carry out the sentence upon the criminal, Wolf Nijssen). O'Callaghan, in his "History of New Netherland", 1: 320 and 441, refers to him as the hangman of the colony. The wording of the entry in the account clearly shows that no such office existed and that the execution of Wolf Nijssen was an exceptional case, in which the negro was induced to serve."

As a whole, the patroon system was not the success which its promoters had anticipated. Eventually serious conflicts developed between the patroons on their respective manorial properties and the West India Company in New Amsterdam. It was impossible that two such colonizing institutions with interests of largely contrary character and each possessing administrative and judicial powers, to a greater or less extent independent of each other, should long live in perfect accord. Quarrels between the patroons and the director general began almost at once, and later on during the administrations of Director General Kieft and Director General Stuyvesant, they became fruitful sources of trouble. The immediate result of these contentions was seen in less than two years. Complaints of the patroons were taken before the West India Company and the States General, and, in the controversy which ensued, blame was thrown upon Minuit, who had countenanced and confirmed these large grants of land with all their objectionable features. Therefore, he was recalled, and returning to Holland early in 1632, his administration came to an end.

Following Minuit as director general came Bastiaen Jansz Krol, or Crol. The discovery of this incumbency of Krol is of recent origin. All earlier historians of New York have recorded Wouter Van Twiller as the successor of Minuit. It appears now, from evidence contained in the "Van Rensselaer Bowier Manu-

scripts,"23 that Krol was an employee of Van Rensselaer, upon the Rensselaer manor, and in a letter to him from Amsterdam, under date of July 20, 1632, Killiaen Van Rensselaer acknowledges the receipt of

"your favor of the — January, in which you thank me that I helped to promote you to the directorship, which I did with pleasure. However, though new lords make new laws, I am astonished at the great changes which they are making, inasmuch as they summon you and albert ditering home and send a new commis to Fort Orange * * * although they now send my nephew Woutter there as director, believe me freely that he has not tried in the least to oust you from your office, as the directors have offered it to him without his asking for it and without my speaking to any one about it for him."24

Further evidence of the Krol occupancy of the director generalship is found in the testimony which he gave in an examination conducted, at the request of the patroons, by a notary in Amsterdam June 30, 1634. Upon that occasion, answering a question as to "in what capacity and for how long he was in the service of the West India Company in New Netherland," he stated that

"After he had been away about 15 months, he was appointed to the directorship at Fort Orange on the North River and held the same for three years. The third time he went out again as director of Fort Orange, and to the best of his recollection served again for about two years. After which he was elected director general of New Netherland at Fort Amsterdam on the island Manhates, lying at the mouth of the aforesaid North River, also named Mauritius, and served in this office 13 months."25

In this same examination, several questions propounded by

^{23. &}quot;Van Rensselaer Bowier Manuscripts", being the letters of Killiaen Van Rensselaer, 1630-1643, and other documents relating to the colony of Rensselaerwyck, translated and edited by A. J. F. Van Laer, Archivest, and published by the University of the State of New York in 1908 as a volume of the New York State Education Department.

24. "Van Rensselaer Bowier Manuscripts", p. 217.

^{25.} Ibid., p. 302.

the notary evidenced a recognition of the fact of Krol's director generalship. For example: "whether in 1633, while he, Crol, was still director of New Netherland," etc.; "whether he was not asked by his successor, the new director, van Twiller," etc.; and "whether the director Pieter Minuit, the predecessor of Crol," etc. It appears, therefore, that Krol was the director general of New Netherland for thirteen months, from the end of February or the beginning of March, 1632, to the end of March, 1633. The scant references here quoted are all that have been discovered concerning his service in this capacity.

Following Krol came Wouter Van Twiller, of Nieuwkerke, who was appointed director general in 1633, and arrived before Manhattan Island in the vessel Southberg (Salt Mountain) in April of the same year. His council was composed of four members; Jacob Jansen Hesse, Martin Gerritsen, Andries Hudde and Jacques Bentyn. As secretary he continued in office Jan Van Remund, who had already succeeded Isaac De Rasieres, the first secretary of the council under Minuit. Cornelis Van Tienhoven was appointed to assist the secretary and to be bookkeeper, and Coenraed Notelman was retained as schout-fiscal. Subsequently, in 1634, Lubbertus Van Dincklagen succeded Notelman as schoutfiscal. He was a physician possessed of considerable means, and a forceful man of independence and authority. He did not long retain the favor of Van Twiller and, being sent back to Holland, was succeeded by Ulrich Lupold, a Hanoverian of Staden.

In what manner judicial proceedings were conducted under the first three directors general of New Netherland—Minuit, Krol and Van Twiller—is not known. It is uncertain that records were kept by the officials of Minuit, but presumably they may have been. Under Van Twiller, records of transactions were made and undoubtedly were included in the voluminous archives

of the West India Company; but practically all those papers were lost or destroyed early in the nineteenth century.

Van Twiller was no more successful in management than his predecessors had been. His incumbency of five years was a record of blunders, inexperience, lack of energy, and a general incapacity for administration. When it became necessary to recall him, the Assembly of Nineteen determined to send out a man of entirely different character. Accordingly, William Kieft, who, although a commercial adventurer of ill repute and once under serious charges of financial dereliction was a person of determination and activity, was chosen. He arrived in the bay before the city of New Amsterdam, March 28, 1638, in the man-of-war *Haerring*, which belonged to the West India Company.

Broad authority was given to the new director general, and under this he was able to adopt measures which placed almost exclusively in his own hand the conduct of the commercial affairs of the West India Company in New Amsterdam and throughout the colony and also the administration of justice. At the outset he determined to have no divided responsibility. He had his own ideas of the policy he should inaugurate and pursue, and he would not be encumbered officially with any one who might perchance oppose him. Instructions from the Assembly of Nineteen were that he should maintain a council, but he followed this instruction in letter only. Lest a council might interfere with his proposed rule, he restricted that body to one person beside himself. choosing John De la Montagne. He retained two votes in the council, while he accorded to De la Montagne only one vote. Thus his absolute control was complete. De la Montagne was a man of high intelligence and decision of character. He was a Huguenot Protestant, educated as a physician. Fleeing from France to Holland after the revocation of the Edict of Nantes

he had come to New Netherland in 1637. Notwithstanding his character and ability, his influence amounted to little in his inconspicuous minority of one.

For provincial secretary, Cornelis Van Tienhoven was appointed, an able energetic official who had formerly been *koopman*, or chief commissary, and bookkeeper of the company. Ulrich Lupold was appointed *schout-fiscal*, but subsequently, in 1639, he was replaced by Cornelis Van der Huygens. In the hands of Kieft, with his one subordinate on the council and his two officials, was thus concentrated the direction of the company's business, the management of the municipal and colonial affairs, and full legislative, executive and judicial powers. As the council was constituted, this meant the unrestricted one-man power of the director general. Outside of New Amsterdam, however, his authority was often called in question by the patroons, who claimed at least semi-independence as their charter right.

Public interests had suffered so greatly during the administration of the previous director general, that Kieft was confronted with a very grave condition of affairs. The company's employees had been trading in furs on their own account, instead of attending to their duties and observing the prescribed regulations; smuggling was common; guns and ammunition had been furnished to the Indians; the town was in a disorderly state, through the insubordination of soldiers and the rioting of sailors and citizens; drunkenness, theft, fighting and immoralities generally prevailed, and mutiny and homicides were not infrequent. The settlements on the upper Hudson were in a state of discontent, while the rights of the Dutch were threatened on Long Island and in Connecticut to the north, and on the Delaware Bay to the south.

Severe measures of repression were imperatively needed if

the authority of the West India Company should be maintained. Kieft did not hesitate, but began to rule with a strong hand. Giving first attention to affairs in New Amsterdam, he issued proclamations in regard to the company's business, the proper conduct of the townsfolk and the legal and judicial procedures under the Holland law which controlled the colony. But his dispensation of justice was a farce. Vain, rapacious and vindictive, he availed himself to the utmost of his administrative and judicial powers to advance his personal interests, and to repress those who ventured in the slightest degree to oppose him. His council enacted laws, imposed taxes, and inflicted fines, confiscations, banishments and other penalties indiscriminately upon the Indians or upon the colonists, as the director desired. All civil and criminal questions were decided without jury, that institution being as yet unknown. He directed that the council should sit every Thursday as a court of justice for "the hearing and adjudication of all civil and criminal processes and for the redress of all grievances of which any one might have to complain;" and he established certain rules for securing the attendance of parties in controversy and for the general conduct of business.

As had been the practice under the preceding directors, the council continued the general administration of affairs of the company, and it was also the ordinary court of justice as well as the final court of appeal. On extraordinary occasions, other inhabitants of the town were added to the council sitting as a court when it was necessary to take under consideration questions of special character, or when cases came up in which perhaps some members of the council might be personally interested. As an historian of the period expressed it: "Whenever anything extraordinary occurred, the director allowed some whom it pleased him—officers of the company for the most part—to be

summoned in addition, but that seldom happened."²⁶ Naturally the persons summoned to participate in court proceedings under these conditions did little more than echo the wishes of their superior, the director general.

From the outset of the Kieft regime there was an abundance of court activity. Slowly the community grew somewhat more orderly, but it was long in becoming staid and law-abiding. Beginning with 1638 the records of the proceedings of the council sitting as a court of justice have been preserved.²⁷ They throw interesting sidelights upon the life of the infant colony, revealing as they do the offenses most prevalent, and the manner in which justice was dispensed.

Slander, which was not an infrequent offense, was punished by fining the offender and ordering a public retraction. Assault was generally punished by fine, but sometimes, in serious cases, an added punishment was imprisonment on a diet of bread and water. Theft was punished by flogging or fining, and in extreme cases by banishment. Soldiers and sailors who mutinied were shot, and sailors who deserted were posted as villains. In cases of differences between individuals, the disposition of the judges was toward a settlement out of court. The records are full of instances where referees or arbitrators were appointed to examine accounts, to consider questions, and to determine how best justice should be done. Generally the referees or arbitrators were directed to try to reconcile disputatious individuals, and often, in subsequent sessions of the court, litigants were reported to have been thus reconciled. Those who defaulted in appearing at the court subjected themselves to a fine of one shilling for their first

27. "Albany Records."

^{26. &}quot;The Remonstrance of New Netherland", by Adriaen Van der Donck.

non-appearance; when they did not appear after a second summons, they were fined two shillings, and upon a third default, judgment was entered against them.

A common punishment was to ride the wooden horse, and this was particularly inflicted upon soldiers for minor offenses. In May, 1642, Philip Geraerdy, a soldier, was convicted of having been absent from the guard without leave, and was sentenced to ride the wooden horse during parade, with a pitcher in one hand and a drawn sword in the other. In April, 1639, Corporal Hans Steen was found guilty of fornication, and was sentenced to ride three hours on the wooden horse, and to be reduced to the ranks for fourteen days. In December, 1638, Hans Schipper and Jochem Beeckman, soldiers convicted of larceny, were sentenced to sit two hours each on the wooden horse. In July, 1645, Jan Alleman, a soldier, was charged before the court with sending to Jan De Fries a challenge to fight a duel. The enormity of the offense is shown by the memorandum in the case, which describes Ian De Fries as being bedridden. The soldier who thus valorously challenged a bedridden man to combat, acknowledged the offense, and was sentenced to ride the wooden horse and be cashiered.

In October, 1638, Hendrick Jansen was arraigned "for scandalizing the governor"; he was sentenced to stand at the entrance of the court at the ringing of the bell which summoned offenders and litigants, and there to ask the governor's pardon. In July, 1638, Gysbert Van Beyerland was found guilty of "drawing his knife upon a person," and was sentenced "to throw himself three times from the sail-yard of the yacht *Hope*, and to receive from each sailor three lashes at the ringing of the bell." In a later year, 1647, we find a similar punishment inflicted, but with an amplification that gave it an additional sting. Andries Trumpeter,

for intoxication, disobedience of orders and threatening the superintendent of naval equipments, was sentenced "to jump three times from the yard-arm, and while his breech is still wet, to receive one hundred lashes from the crew."

A famous slander case was that tried in October, 1638. Anthony Janse, from Salee, sometimes called "the Turk," and thought to have been a semi-Dutchman from Morocco, was the defendant in an action brought by the fiscal, because his wife Grietje had slandered the Reverend Everadus Bogardus. Grietje was sentenced to stand in the fort and there "publicly to declare, at the ringing of the bell, that the minister is an honest and honorable man; to acknowledge that she lied, and to pay costs and three guilders to the poor"; her unfortunate husband Anthony was bound over to keep the peace toward Mr. Bogardus, and to pay a fine of twelve guilders. Two days after this sentence was imposed, the records say that Grietje appeared in court "to make her confession, begging pardon of God, the court and the minister, and promising to comport herself in future so as to satisfy the authorities."

This Anthony Jansen and his wife seemed to be well-nigh the most troublesome people of the place at this time. They were repeatedly brought before the court for violation of municipal ordinances or offences against their neighbors, and the names of no other citizens of New Amsterdam appear so frequently in the record of court proceedings in 1638 and 1639. Among the offences with which one or the other of this law-violating couple were charged were stealing hogs, improper conduct, immodest language, and slander; the last named offence seemed to be habitual with them, for in one session of the court there were no less than four charges of the kind against them. Anthony was sued for debt repeatedly, and for non-fulfillment of contracts.

Finally, on April 7, 1639, the husband and wife were arraigned as public disturbers and slanderers, and sentenced to pay costs of court and be forever banished from New Netherland. Even after that date, Anthony was sued for debt, and the plaintiff pleaded that he should not be permitted to banish himself from New Netherland until the indebtedness had been settled.

In June, 1646, Jan Creoli, a negro, was convicted of sodomy, a second offence. "This crime", so says the record, "being condemned of God (Gen. c. 19; Levitt, c. 18; 22:29) as an abomination," he was sentenced to be conveyed to the place of public execution and there choked to death and then burned to ashes. In November, 1644, Symon Volvertsen, who was convicted of theft, a second offence, was sentenced "to be conveyed to the place of public execution and there flogged as an example and terror to evil-doers, and then banished."

An instance of a somewhat original method of justice was in January, 1641, when eight negroes—Clein Antonio Paulo d' Angola, Gracia d' Angola, Jan of Fort Orange, Manuel de Gerrit, the giant, Anthony Portuguese, Manuel Minuet, Simon Congo, and Manuel the Great—were tried for killing Ian Promero, another negro. All the accused pleaded guilty, and the sentence was that they should draw lots to determine "who should be punished with the cord until death, praying the Almighty God, the Creator of Heaven and Earth, to direct that the lot may fall on the guiltiest, whereupon the lot fell, by God's Providence, on Manuel de Gerrit, the Giant." The murderer thus selected for punishment was remanded for sentence, and at the next session of the court he was accordingly "sentenced to be hanged by the neck until dead, as an example to all such malefactors." In the records of the council it is further set forth that upon the day of execution the hangman "turned off the ladder the above negro",

who had two strong halters around his neck. Both the halters broke, and the condemned man fell to the ground, "whereupon all the by-standers called out mercy, which was accordingly granted"; and so he, upon whom "by God's Providence" the lot had fallen, went free.

In November, 1641, Jan Hobbesen, accused of stealing a sheet from a bed in the city tavern, pleaded intoxication, and said that he knew nothing about the matter. The case was postponed in order to give the prisoner a chance to confess, but on the next court day he still persisted in denying the charge. And then, so the record says, he was put to torture, whereupon he confessed his guilt. He was sentenced to be taken to the place of public execution and there to be whipped with rods, "immediately after which he is to remove himself beyond the limits of New Netherland, on pain, if found again in the country, to be put in chains and set to work with the company's negroes."

In August, 1638, Jan Gysbeertsen, of Rotterdam, and Gerrit Jansen, engaged in a fight with knives outside the gate of the fort. In this encounter Gerrit Jansen was killed, but his murderer escaped. In the September following, the murderer, who had not yet been found, was tried and sentenced, whenever apprehended, to be punished "by sword until dead, his property confiscated, and his wages paid, one-half to the widow or heirs of the deceased, one-fourth to the company, and the remainder to the prosecutor."

In October, 1639, Andries Hudde brought an action against David Provoost for the fulfillment of a contract to sell a yawl, and the court ordered that "the present owner of the boat should ferry the defendant next winter across the East River and back." In June, 1645, William Gerritsen who, according to the record, was an Englishman, was convicted of libeling the Reverend Fran-

cis Doughty, the English clergyman of Flushing. The libel consisted of singing a defamatory song against the plaintiff and his daughter. Pleading guilty, Gerritsen was sentenced to stand bound to the maypole in the fort, with two rods around his neck and the libel over his head, until the conclusion of the English sermon; "and should he ever sing the song again, to be flogged and banished."

But Kieft had more serious troubles to meet than the grievances of quarreling neighbors and the small moral infractions of a frontier community. Scarcely had he settled himself firmly in his new position than grave questions of government pressed for solution. From the very beginning of the patroonships, differences had existed between the representatives of the patroons on their several estates and the authorities in New Amsterdam. These differences rapidly grew in importance, and as early as 1638 the patroons demanded from the West India Company larger privileges than had been at first granted to them. Before this time the directors of the company had purchased from several of the patroons the landed properties which they had acquired under the Charter of Freedoms and Exemptions in the time of Minuit, but the issue had not been wholly met by this move. Rensselaerwyck was the one manorial property which had prospered, but others were still feebly maintained. This continued agitation for wider oportunities and more privileges for the patroons and for other colonists, resulted in a new Charter of Freedoms and Exemptions, which was adopted by the Assembly of Nineteen in July, 1640.28 This charter was particularly designed to encourage emigration, and to settle and develop the

^{28. &}quot;History of Westchester County", by J. T. Scharf, vol. I, pp. 54-55; "Documents Relative to the Colonial History of the State of New York", vol. I, p. 120.

country about New Amsterdam as well as to increase the trade with the Indians. It provided that:

"The Company shall, accordingly, appoint and keep there a Governor, competent Councillors, Officers and other Ministers of Justice for the protection of the good and punishment of the wicked; which Governor and Councillors, who are now, or may be hereafter appointed by the Company, shall take cognizance, in the first instance, of matters appertaining to the freedom, supremacy, domain, finance and rights of the General West India Company; of complaints which any one (whether stranger, neighbor or inhabitant of the aforesaid country) may take in case of privilege, innovation, desuetude, customs, usages, laws or pedigrees; declare the same corrupt or abolish them as bad, if circumstances so demand; of the cases of minor children, widows, orphans and other unfortunate persons, regarding whom complaint shall first be made to the Council holding prerogative jurisdiction in order to obtain justice there; of all contracts or obligations; of matters pertaining to possession of benefices, fiefs, cases of lesae majestatis, of religion and all criminal matters and excesses prescribed and unchallenged, and all persons by prevention may receive acquittance from matters there complained of; and generally take cognizance of, and administer law and justice in all cases appertaining to the supremacy of the company."29

As regards the administration of justice by the patroons the charter provided:

"And should any Patroon, in the course of time, happen to prosper in his Colonie to such a degree as to be able to found one or more towns, he shall have the authority to appoint officers and magistrates there, and make use of the title of his Colonie, according to the pleasure and the quality of the persons, all saving the Company's regalia.

"And should it happen that the dwelling places of private Colonists become so numerous as to be accounted towns, villages or cities, the Company shall give orders respecting the subaltern government, magistrates and ministers of justice, who shall be nominated by the said towns and villages in a triple number of the best qualified, from which a choice and selection is to be made by the Governor and Council; and those shalf determine all questions and suits within their district³⁰

New York", vol. I, p. 120.

[&]quot;Documents Relative to the Colonial History of the State of New York", vol. I, p. 123.
30. "Documents Relative to the Colonial History of the State of

"From all definitive judgments pronounced by the Courts of the Patroons or Colonists, for an amount exceeding one hundred guilders, or from such as entail infamy, also from all sentences pronounced in matters criminal, on ordinary prosecution, conformable to the custom of this country, an appeal shall lie to the Governor and Council of the company in New Netherland."

That Kieft's director generalship should result in practical failure, both as regarded the financial success of the company which he represented and the improvement of the condition of the colony, was from the outset a foregone conclusion. His position was difficult, and it was soon apparent that, despite his natural ability, he was ill-fitted to solve the problems left to him by his predecessors and the new ones that were continually arising to plague him. His arbitrary methods and his general bad judgment in dealing with the situation made the colonists more and more dissatisfied with the condition of affairs in which they were placed, and with the burdens which they were compelled to endure. Only a few years removed from their native Holland, the settlers had not yet had time to forget the privileges and freedoms which they and their fathers had long enjoyed on the other side of the Atlantic. They chafed under the imperious manners of the director general, who, although without royal rank or prestige, assumed more authority and inflicted more hardships upon those over whom he had been placed temporarily, than would a king or emperor in their former home. Naturally they resented this, and as time went on and no signs of a change of heart in their master were manifest, they became more and more determined than ever before to assert themselves and to demand what they considered were their rights as citizens. The movement for popular representation in the control of colonial affairs

^{31. &}quot;Documents Relative to the Colonial History of the State of New York", vol. I, p. 122.

had already manifested itself in the time of Van Twiller, and now under Kieft it came stronger than ever to the front as the great issue of the moment between the colonists and the governor. Month by month Kieft grew in unpopularity, while the protests of the people against him increased and their demands to participate in the government were more and more insistent.

Finally opportunity came to the people in 1641. Trouble with the savages had been gradually increasing, especially with the Raritan Indians on Staten Island, and the murder of a wheelright named Class Cornelissen Smiths, or Switz, brought the crisis. Kieft determined to wreak vengeance upon the Indians, but, having some doubt concerning the wisdom and the outcome of such a venture, he wished to place the responsibility for a possible disaster upon the community of New Amsterdam instead of taking it entirely upon himself. Accordingly he called upon the heads of families to select twelve representatives to confer with him in regard to the matter. These twelve men were: David Pietersen de Vries, chosen president by his associates; Jacques Bentyn, Maryn Adriaensen, Jan Jansen Damen, Hendrick Jansen, Jacob Stoffelsen, Abram Pietersen Molenaar, Frederick Lubbertsen, Jochem Pietersen Kuyter, Gerrit Dircksen, Joris Rapelje and Abram Planck. They were residents of Manhattan, Pavonia, Long Island and Staten Island.

The Twelve Men—who constituted the first popular representative body of New Netherland—gave their approval to a campaign against the Indians. They also availed themselves of the opening afforded them by their election as a representative body, to make demands on the governor for those reforms in the administration of the affairs of the community which the people, as a whole, had long desired. Particularly were they insistent that courts of justice similar to those which existed in the towns

and villages of Holland—boards of *schepens*, or magistrates—should be established. They also asked that the membership of the council should be increased to at least five; they registered their decided disapproval of the practice of summoning "the common people," that is the servants and employees of the company, to the bench; finally, they demanded that the director of the council should not sit in judgment unless five of the council were presiding in the court.

These were bold representations, but Kieft promptly disposed of them. He denied that the "common people" on the bench, even though they were servants of the company, were ever guilty of unrighteous judgments, and he consented to add four members to the council, saying that he had already decided on that move. Then, in an order as brusque as it was brief, he proceeded to dissolve the body of Twelve Men, February 8, 1642:

"And whereas the Commonalty at our request appointed and instructed these 12 men to communicate their good council and advice in the subject of the murder of the late Claes Cornelissen Swits, which was committed by the Indians; this being now completed by them, we do hereby thank them for the trouble they have taken, and shall with God's help make use of their rendered written advice in its own time. The said Twelve men shall now, henceforth hold no further meetings, as the same tends to a dangerous consequence, and to the great injury both of the country and of our authority. We, therefore, hereby forbid them calling any manner of assemblage or meeting, except by our express order, on pain of being punished as disobedient subjects."³²

As soon as the Twelve Men had dropped back to common citizenship, everything reverted to its former condition. Kieft did not keep his promise to increase the membership of the council, nor did he give the citizens representation in the administration of judicial affairs. Difficulties with the Indians continued, and were the most disturbing element in the life of the colony.

^{32. &}quot;Documents Relative to the Colonial History of the State of New York", vol. I, p. 203.

Then, for a second time, it was Indian warfare which brought Kieft to the imperative necessity of calling upon his townsmen to help him out of the trouble which his rashness and folly in dealing with the aborigines had brought upon the community. In 1644, after his fatuous massacre of the Indians at Pavonia and on Long Island, he again convoked the community into an assembly to plan for the common protection. Again the citizens met, and this time they selected a board of Eight Men. These Eight Men were: Jochem Pietersen Kuyter, Jan Jansen Damen, Barent Dircksen, Abraham Pietersen, Isaac Allerton, Thomas Hall, Gerrit Wolfertsen and Cornelis Melyn. Jan Jansen Damen was excluded by his associates for his connection with the Pavonia massacre, and Jan Evertsen Bout was chosen in his place.

The Eight Men agreed that the common interests demanded that strong measures should be taken to repress the savages. But they felt little disposed to assist the director-general further than was absolutely imperative for the protection of the community. Kieft's unpopularity had become so decided that it was generally felt that no improvement in the condition of affairs could be expected from him. Accordingly, the Eight Men, quite ignoring their superior, appealed directly to the Assembly of Nineteen of the West India Company, and also forwarded a memorial to the States General of Holland. In this action they were led by their president, Cornelis Melyn, the patroon of Staten Island, who with the memorial sent a letter giving his version of affairs of the colony. In the memorial the Eight Men presented a gloomy picture of their condition. They recited the former peaceable and friendly attitude of the Indians during the administration of Van Twiller, and then proceeded to say that:

"The director hath by various uncalled for proceedings, from time to time, so estranged these from us, and so embittered against the Dutch na-

tion, that we do not believe any thing will bring them back, unless that the Lord, who bends all men's hearts to his will, propitiate them. Thus hath the Antient very truly observed; 'Any man can create turmoil, and set the people one against the other; but to establish harmony again, is in the power of God alone.'"

The memorial further stated that although a temporary and illusory peace had been patched up, the savages continually attacked settlers, at times not a thousand paces from the fort; that the company's farms were in danger of being laid waste; that nothing had been done recently, even since the arrival of the immigrants and soldiers from Brazil and that everything was going to ruin. The memorial concluded with this appeal:

"Honored Lords! This is what we have, in the sorrow of our hearts to complain of; That one man, who has been sent out, sworn and instructed by his Lords and masters, to whom he is responsible, should dispose here of our lives and properties at his will and pleasure, in a manner so arbitrary that a King dare not legally do the like. We shall terminate here and commit the matter wholly to our God; who we pray and heartily trust, will move your hearts and bless your deliberations; so that one of these two things may happen; that a governor may be speedily sent with a beloved peace to us; or, that your Honors will be pleased to permit us to return with wives and children to our dear Fatherland. For it is impossible ever to settle this country until a different system be introduced here and a new Governor sent out with more people, who will settle themselves in suitable places, one near the other, in form of villages and hamlets, and elect, from among themselves, a Bailiff, or schout, and schepens, who will be empowered to send their deputies and give their votes on public affairs with the Director and Council; so that the entire country may not be hereafter at the whim of one man again reduced to a similar danger."33

In the concluding demand for the privilege of electing a schout and schepens was the first full and definite expression of a popular desire in the colony that was to find fruition a few

^{33. &}quot;Documents Relative to the Colonial History of the State of New York", vol. I, ("Holland Documents", III) p. 213.

years later under another governor. It voiced the feeling of the colonists that the law as administered by the director general and his council was the controlling power of their bondage and oppression, and that transferred to their hands it would be the instrument of freedom. The judicial and municipal tribunals which they demanded were similar to those which they had enjoyed at home as citizens of Holland. In every town and village in Holland the institution to which they referred had existed for more than a century.

"It was a local tribunal of a highly popular character. It united the two-fold functions of a court of justice and of a municipal government, and consisted of a bench of magistrates, denominated burgomaster and schepens, with whom were associated a schout, whose especial duty it was to prosecute all offenders before the court, and to carry into execution its resolves or decrees. The burgomaster was a kind of mayor. The schepen resembled an alderman, and the schout performed the duties which, under our system are respectively assigned to sheriffs and district attorneys. The principle of popular representation was recognized in the composition of this body. The mode of appointment was not uniform throughout Holland; but generally the inhabitants of the town were possessed of a certain property qualification; assembled annually in a town council of vroedschap, and elected eight or nine 'good men', and this representative body chose the burgomaster and schepens. The schout, under the feudal law was appointed by the court or manorial Lord, though in certain places, as in the city of Amsterdam, he was chosen by the burgomaster and schepens."34

When these memorials to the States General and the West India Company arrived in Holland, they occasioned deep concern. By this time the West India Company had become practically bankrupt, and it now asked for a subsidy in order that the colony should be placed in a safe and prosperous condition. It was even seriously considered whether it would not be best to transport the colonists in a body back to the Fatherland, and

^{34. &}quot;Historical Sketch of the Judicial Tribunals of New York, from 1623 to 1846," by Charles P. Daly, p. 7.

altogether abandon an unprofitable enterprise. But other advice finally prevailed. After due consideration, it was determined that a change must be made in the government of New Netherland. Provisionally, Lubbertus Van Dincklagen, who had been the *schout-fiscal* under Van Twiller until he had been banished to return to Holland, was appointed director general in place of Kieft. Van Dincklagen did not leave Holland, however, to take physical charge of the colony; presently his appointment was revoked, and General Petrus Stuyvesant was appointed to be his successor.





Peter Stuyvesant

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PETER STUYVESANT.

(1602-1682).

Dutch Director General of New Netherland, 1047-64.

CHAPTER II

Under the Rule of Stuyvesant



CHAPTER II

UNDER THE RULE OF STUYVESANT

1645-1664

LAWS AND ORDINANCES ARE PROCLAIMED—THE BOARD OF NINE MEN AND THEIR JUDICIAL FUNCTIONS—INSTITUTING THE COURT OF BURGOMASTERS AND SCHEPENS—MEETING OF THE FIRST POPULAR LAW COURT OF NEW NETHERLAND IN THE STADT-HUYS OF NEW AMSTERDAM—FORMS OF LEGAL PROCEDURE, INSTRUCTIONS TO THE JAILOR, AND THE FIRST FEE BILL—SOME TYPICAL COURT CASES—LOCAL COURTS IN OTHER TOWNS OF THE COLONY.

Although the appointment of Stuyvesant had been determined upon in 1645, and instructions were issued to him by the Assembly of Nineteen in July of that year, his commission from the States General was not dated until fully twelve months later, July 28, 1646. Even then he did not immediately leave for New Netherland, but delayed until the spring of the following year, and meantime Kieft, despite his unpopularity, held over as director.

The new director general sailed from the Texel on Christmas Day, 1646. Arriving at New Amsterdam, May 27, 1647, he entered at once upon the duties of his office. In the commission issued to him by the States General he was particularly charged

"To attend carefully to the advancement, promotion and preservation of friendship, alliances, trade and commerce; to direct all matters relating to traffic and war, and to maintain in good order everything there for the service of the United Netherlands and the General West India Com-

pany; to establish regularity for the security of the places and forts therein; and to administer law and justice as well civil as criminal."

His instructions from the Assembly included directions "to pacify the Indians," and "first of all to establish the colonists and freemen on the Island of Manhattan and grant them as much land as they shall be able to cultivate." It was calculated that in the discharge of his duties he would be absent in the West Indies at some time. For this reason, and also because the West India Company had finally come to the conclusion to establish a court in New Netherland, it was necessary that he should have capable assistance in his council. Accordingly, a vice-director, Lubbertus Van Dincklagen, and a fiscal, Hendrick Van Dyck, were appointed to accompany him, the latter to have a seat but no vote at the council board. Other members of his council were Captain Bryan Newton, Johannes De la Montagne, who was retained as councilor; and Cornelis Van Tienhoven, who was the provincial secretary. George Baxter, who, since 1642, had been the English secretary of the preceding director general, was continued, for the very important reason that "none of the company's officers could tolerably read or write the English language." This equipment was rather necessary, inasmuch as the colony had English neighbors in New England and English settlements on its Long Island territory.

The first serious trouble which Stuyvesant was compelled to face was the settlement of the quarrel between Kieft and the commonalty. For some time after his successor arrived, the deposed director general remained in New Amsterdam and continued to be a disturbing element in the community. Resentful to the last, he still pursued those who had dared to lead the attack

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^{1. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. I, p. 178.

against his authority and had been instrumental in accomplishing his removal. Cornelis Melyn and Joachim Pietersen Kuyter, members of the Board of Eight Men, brought charges against him for maladministration of his office and injustice done to the people.

But Stuyvesant took the part of his predecessor, and in the end the tables were turned. Upon trial, the accusers were held to be guilty of grave offense for presuming to attack one in authority over them. Melyn was condemned to be banished for seven years, to pay a fine of three hundred guilders, and to forfeit all benefits which he might be entitled to derive from the company. Kuyter was condemned to three years' banishment, and to pay a fine of one hundred and fifty guilders.

With his character thus partly restored, Kieft, for the moment triumphant over his enemies, set sail from New Amsterdam for Holland in the ship *Princess*, August 16, 1647. With him was his old antagonist, the Reverend Everadus Bogardus; Cornelis Van der Huygens, the late *schout-fiscal*; and Melyn and Kuyter. The vessel was wrecked on the coast of Wales, and Kieft, Bogardus, Van der Huygens and others were drowned. Kuyter and Melyn with their papers were rescued, and, reaching Holland again, they very soon played important parts in the work of gradually securing a measure of popular government for New Netherland.

Without much delay Stuyvesant proceeded to reorganize the court of justice which was already in existence as part of the council. Of this court the vice-director, Van Dincklagen, was appointed presiding judge, and from time to time, as occasions required, others of the company's officers were associated with him. This new tribunal was empowered to make decision in all cases which came before it, subject only to the obligation of ask-

ing the opinion of the director general upon questions of great importance. The director general reserved to himself the privilege of presiding in the court whenever he thought that was necessary, and this privilege he frequently exercised. The court had charge of the enforcement of laws governing the municipality and colony, as well as the commercial affairs of the company so far as violations of rules and regulations were concerned.

From time to time Stuyvesant issued proclamations for the government of the colony and for the better control of the business of the company for which he was particularly responsible. These edicts related not only to the financial maintenance of the colony and to the development of the company's business, but also to the general behavior of the members of the little community. There were enactments against the desecration of the Sabbath, fighting, and such like irregularities. Tavern-keepers were forbidden to furnish any persons, except travellers and the inmates of their own houses, with liquor on the Lord's day before two o'clock in the afternoon. No liquors were to be sold on any account to the savages under penalty of five Carolus guilders, the seller to be responsible for the consequences, nor to any person whatsoever after the ringing of the bell at nine o'clock in the evening. The statute law of the Fatherland was declared to be in force against all who should draw a knife upon and wound others; simply drawing a knife was to be punished by a fine of one hundred Carolus guilders, or six months' hard labor on bread and water; if a word followed, the penalty was to be increased threefold.

Stringent enactments against smuggling were promulgated. With a view to defraud the revenue, a practice had sprung up among the traders of sending their furs to New England or to Virginia, whence they would be transhipped to Europe; also mer-

chandise of various kinds was surreptitiously introduced into the province in vessels which passed the island of Manhattan under cover of darkness. To put a stop to this, strict orders were given that no merchandise should be sold within the limits of the company's jurisdiction before it had been entered and the duties thereon paid. It was, moreover, commanded that henceforward no furs should be exported, under penalty of confiscation, until they had first been marked with the company's stamp and recognized. All fur traders were to be compelled to exhibit their books on demand, to be inspected by the director general, in order that he might ascertain to whom sales had been made and if the proper duties had been paid. To carry on the public service, excise duties on wines and spirituous liquors were imposed and the export duties on furs were increased. Municipal regulations were also announced in order that the living conditions of the town should be improved, as was greatly needed.2

It was not long before the new governor found himself forced to take up for consideration the question which had made the closing years of his predecessor's administration years of trial and tribulation. The desire of the colonists for a popular form of government, in a measure independent of the West India Company's autocratic rule,—a desire which had arisen during the regime of Van Twiller and had developed under Kieft,—was now displaying itself even more strongly than before. The expectations of the citizens of New Amsterdam that, in ridding themselves of Kieft, they would succeed in achieving the privilege of participating in the government, could not be wholly denied. Altogether, Stuyvesant was too much of a soldier to

^{2. &}quot;History of New Netherland", by E. B. O'Callaghan, M. D., LL.D., vol. II, p. 22. "Laws and Ordinances of New Netherland", in "Records of New Amsterdam", vol. I, p. 1.

view with equanimity the possible curtailing of any of his authority. Nevertheless, he dared not entirely ignore the popular feeling in the community and the spirit of the instructions which had been given to him. Accordingly, when he found that he was more or less dependent upon the colonists to assist him in maintaining the city fortifications and in inaugurating measures against the Indians, he yielded. In an order to the people he directed them to name eighteen "expert and reasonable persons" from whom he would select, "as is customary in the Fatherland," nine men to give advice. The nominations were accordingly made, and on September 25, 1646, he announced his choice, declaring that:

"Whereas it is difficult to cover so many heads with a single cap, or to reduce so many different opinions to one, so did we, heretofore, with the advice of our Council propose to the commonalty that the inhabitants should, without passion or envy, nominate a double number of persons from the most notable, reasonable, honest and respectable of our subjects, from whom we might select a single number of Nine Men, to them best known, to confer with us and our Council, as their tribunes, on all means to promote the welfare of the commonalty as well as that of the country."²

The Nine Men who were chosen were: Augustine Heermans, Arnoldus Van Hardenburg, Govert Loockermans, Jan Jansen Dam, Jacob Wolfertsen Van Cowenhoven, Hendrick Hendricksen Kip, Michael Jansen, Jan Evertsen Bout and Thomas Hall. Of these men, three were of the merchants, three of the citizens, and three of the farmers, and they were representatives of Manhattan, Brueckelen, Amersfoort and Pavonia. This body, which was officially known as the Board of Nine Men, had certain judicial powers which were conferred by an ordinance of the governor September 25, 1647, making it in effect a court of infe-

^{3. &}quot;History of New Netherland," by E. B. O'Callaghan, M. D., LL.D., vol. II, p. 37.

rior jurisdiction. That particular section of the charter to this board which defined its powers, duties and methods of procedure, was as follows:

"III. Whereas, by increased population, the number of lawsuits and altercations unavoidably are multiplied, and many trifling questions may be terminated by arbitrators; otherwise, important affairs must be postponed to the great prejudice of this city and its inhabitants, and at the price of enormous expense, loss of time and vexation of the contending parties, therefore three out of the number chosen shall once in each week, namely, on every Thursday, on the usual court day, be admitted to Our council, as long as civil cases are before the Court, to become acquainted with cases where parties might be referred to them as arbitrators; to wit: one from the merchants, one from the citizens, and one from the farmers. This shall circulate in rotation among them every month, and in case any one cannot attend Court, by reason of sickness or otherwise, another member of the class shall then take his place, when parties shall be referred by the Director to them as arbitrators, to whose decision parties shall be obliged to submit, or by unwillingness pay for the first time one pound Flemish (\$2.40), before the plaintiff can appeal or be admitted to Our Council."4

In the same charter it was prescribed that the Nine Men

"Shall endeavor to exert themselves to promote the honor of God, and the welfare of Our dear Fatherland, to the best advantage of the Company and the prosperity of Our good citizens; to the preservation of the pure Reformed Religion as it here and in the Churches of the Netherlands is inculcated. They shall not assist at any private conventicles or meetings, much less patronize such like deliberations and resolves, except with the special knowledge and advice of the Honorable Director-general and Council and on his special order, unless only when they are convened in a legitimate manner, and have received the proposals of the Director-general and Council, then they have liberty to delay so that they may consult together upon such proposals and then bring forward their advice; provided that it remains always in the power of the Director-general either to assist at such meeting in person or to appoint either one of the Council to act as President of such meeting."

Notwithstanding this apparently substantial concession to the

^{4. &}quot;History of New Netherland," by E. B. O'Callaghan, M. D., LL.D., vol. II, p. 38.
5. Ibid., vol. II, pp. 38-39.

popular will, the government of Stuyvesant did not succeed in winning much more popular favor than had that of his predecessor. The people desired to live under institutions to which they had been accustomed in Holland, and nothing less than this full measure of freedom would satisfy them. They could not endure a condition of subservience to appointed authority constituting a system which was wholly at variance with their natural instincts and their feeling of nationality. Stuyvesant was a military ruler unaccustomed to paying deference to any save his superiors in authority. There was thus a wide gulf between the director and the people, impossible to be bridged by any concessions which would be considered reasonable on the side of authority, or satisfactory on the side of the people. Almost from the beginning, the director was constantly at variance with the popular leaders, and in less than two years he was in open conflict not only with the Board of Nine Men, but also with schout-fiscal Van Dyke and vice-director Van Dincklagen. It was still possible for him to control the council, but he was not always able to impose his will upon the popular body of Nine Men.

Soon came a crisis in affairs. The Nine Men, voicing the spirit of discontent in the community, resolved to send a delegation to Holland to present their grievances to the West India Company and the States General. A spirited remonstrance was drawn up, and three of the board, Adriaen Van der Donck, Jacob Van Cowenhoven and Jan Evertsen Bout, were deputed to proceed with it to the Fatherland. This celebrated document, the "Vertoogh van Nicuv-Neder-Landt" (Remonstrance of New Netherland), was probably written by Van der Donck, who was president of the Board of Nine Men. It was signed by all the members of the existing and of the former boards of Nine Men, July 26, 1649, and the three delegates sailed for Holland with

it in the ensuing month of August.⁶ In this Remonstrance, Stuyvesant and his methods in the administration of justice were characterized in no mild terms:

"As regards the Director, his manner in court has been, from his first arrival unto this time, to browbeat, dispute with and harass one of the two parties; not as beseemeth a Judge, but like a zealous advocate. This has caused great discontent everywhere, and has gone so far and had such an effect on some, that many dare not bring any suits before the court, if they do not stand well, or passably so, with the Director; for whom he opposeth hath both sun and moon against him. In addition to the fact that he hath himself appointed and obliged so many Councillors, some of whom also are well disposed, so that he can constrain the others by plurality of votes, he likewise frequently submits his opinions in writing, and that so fully and amply that it takes up some side, and then his word is "Gentlemen, this is my opinion, if anyone have aught to object to it, let him express it." If any one, then, on the instant, offer objection, which is not very easy unless he be well grounded, his Honor bursts forth, incontinently, into a rage, and makes such a to-do that it is dreadful; yea, he frequently abuses the Councillors as this and as that, in foul language better befitting the fish market than the council board; and if all this be tolerated, he will not be satisfied until he have his way."

This mission to Holland was only partially successful. A hearing was accorded to the New Netherland delegates in April of the following year. A provisional order was issued by the States General providing for the government, preservation and peopling of New Netherland, and suggesting to the West India Company that Stuyvesant should be recalled to make a report upon the condition of affairs under his jurisdiction. In this order it was announced that a burgher government should be established in New Amsterdam, in pursuance of the request of the people there, to consist of two burgomasters, five schepens, and a schout; and it was furthermore decided that a court of justice should be erected in New Netherland, and that, pending

^{6. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. I, p. 275.

the conclusion of this arrangement, the Nine Men should continue in office for three years longer, and exercise limited judicial powers in the trial of "small civil causes arising between man and man," and "to adjudicate definitely on suits not exceeding the sum of Fifty Guilders and on higher amounts under privilege of appeal."

When these orders reached New Amsterdam, Stuyvesant refused to comply with them, possibly under instructions, given or implied, of the Assembly of Nineteen, and the difficulties appeared as far away from settlement as ever before. In another appeal to the States General sent by the Nine Men was the following:

"We have seen and found your High Mightinesses our kind and loving fathers who have taken to heart the pitiful and desolate condition of the poor commonalty here, for which we cannot sufficiently express our thankfulness to God and to you. But the non-arrival of reform, the neglect of Director Stuyvesant to obey your orders though they have been communicated to him, and the continuation of affairs in the same sad condition already submitted to you, compel us again to pray your High Mightinesses to show favor to us, for we cannot undertake anything as long as reforms are withheld. We hope you will give us a good and wholesome government."

The struggle continued for more than two years longer, Stuyvesant obstinately holding out against the wishes of the people and ignoring as much as he could the orders of the States General and the West India Company. He grew more and more violent and unreasonable, imprisoned Van Dincklagen for uniting with Van der Donck in protest to the States General, dismissed from office the *schout-fiscal*, Van Dyck, for co-operating with the Nine Men, and followed up these acts by equally arbitrary measures against other leaders of the popular movement.

^{7. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. I, pp. 387, 389 and 391. Ibid., vol. I, p. 387.

"The four years during which Stuyvesant had administrated the government of New Netherland were marked by arbitrary efforts to repress the spirit of popular freedom which the Dutch emigrants brought with them from the Fatherland. In turn the Nine Men, the vice-director (Van Dincklagen), the only notary in the province (Van Schelluyne), and the patroon of Staten Island (Melyn), were made to feel the displeasure of authority. Van Dyck, the *schout-fiscal*, who sided with the Nine men, was early excluded from the council and personally insulted by his imperious chief."

Meantime, Van der Donck and Melyn continued to press their case before the Holland authorities, and finally the Assembly of Nineteen, after they had employed every other possible means to counteract the popular movement, was compelled to yield and decide that the citizens of New Amsterdam, in accordance with the seventeenth clause of the provisional order of 1650, should have a municipal form of government. This was the beginning of municipal institutions in the metropolis of the New World. The Assembly wrote to Stuyvesant, April 4, 1652:

"We have resolved to permit you hereby to erect a Court of Justice (een banck van justitie) formed, as much as possible, after the custom of this City; to which end, printed copies relative to all the law courts here, and their whole government, are sent herewith. And we presume that it will be sufficient at first to choose one schout, two Burgomasters and five Schepens, from all of whose judgments an appeal shall lie to the Supreme Council, where definite judgment shall be decreed."

It was evident from the order of the States General and also from the directions issued by the Assembly of Nineteen, that it was the intention to have these officers elected by the people, according to the custom which then prevailed in the cities, towns and villages of Holland. Stuyvesant, however, was not inclined to allow this concession to go further than he was absolutely

^{8. &}quot;History of the State of New York," by J. T. Brodhead, vol. I, p. 532.

^{9. &}quot;Documentary History of the State of New York", by E. B. O'Callaghan, M. D., LL.D., vol. I, p. 387.

compelled, and he chose to ignore the spirit, if not the letter, of his instructions. Accordingly, upon the second of February, 1653, he promulgated a proclamation in which he announced that the town would henceforth be ruled by two burgomasters and five schepens who should be appointed by him. At the same time he officially declared that the settlement on the Island of Manhattan should thereafter be the city of New Amsterdam.

Still the municipal court was not completed, since no schout of the city had been provided. Cornelis Van Tienhoven, who had held that position for the West India Company, was directed to act in the same capacity for the city. Although the prescribed form of government was that which existed in Amsterdam, where the burgomasters had the right to appoint their secretary, that privilege was denied the magistrates appointed by Stuyvesant for the city of New Amsterdam. The director general appointed Jacob Kip to be the city secretary, with a salary of two hundred and fifty florins (\$100.00). In making this appointment there was a condition that the West India Company might send out from Holland another man for the place, in which event it was promised that Kip should have some other office equally good;—an example of providing for an office holder which has been followed even to later times.

Stuyvesant also took occasion to inform the new tribunal in emphatic terms that its establishment, or the scope of its authority, did not in the slightest degree diminish the power of himself or his council to pass whatever laws or ordinances they pleased for the municipal government of the city. He appointed as burgomasters Arendt Van Hattem and Martin Kregeir, and as schepens Paulus Leendersteen Van der Grift, Maximillian Van Gheel, Allard Anthony, Pieter Wolfertsen Van Couwenhoven and William Beeckman.

On February 6 the newly appointed magistrates met for the first time, and this was the initial meeting of a popular law court in New Netherland. Van Tienhoven, the *schout-fiscal* attended in his capacity as city *schout*, and Jacob Kip was present as secretary. The records of this first meeting are as follows:

"Thursday, February 6, 1653, present Martin Krigier (Aarent van Hattem,) Poulus Leendersen van die Grift, Maximilynus van Gheel, and Allard Anthony, Willem Beeckman and Pieter (Wolfertsen).

"Their Honors, the Burgomasters and Schepens of this city of New Amsterdam, herewith inform everybody, that they shall hold their regular meetings in the house hereto called the City Tavern, henceforth the City Hall, on Monday mornings from 9 o. c., to hear all questions of difference between litigants and decide them as best they can. Let everybody take notice hereof. Done this 6th of February, 1653, at N. Amsterdam. Signed (as above except Arent van Hattem.)"¹⁰

Inasmuch as the *Stadt Huys* was not ready on the day appointed, the next meeting of the magistrates took place in the fort, February 10. Upon this occasion the court was duly organized for the conduct of business. Proceedings opened with prayer, a practice which was thereafter regularly followed. The prayer offered on these occasions has been preserved in the records, and it shows the keen sense of responsibility entertained by the new magistrates regarding the duties and obligations of the judicial offices which they held.

"Oh God of Gods, and Lord of Heavenly Hosts and Merciful Father, We thank thee, not only that Thou hast not only created us after Thine own image, but also that When we were lost Thou hast received us in Christ as Thine own Children and allies. In addition it has pleased Thee to make us the rulers of the People in this place. Oh Lord our God, we miserable men acknowledge that we are not worthy of this honor, we are also too feeble and unfit to discharge this trust, unless Thou, O, God, give us assistance. We pray Thee, Oh, Fountain of all good Gifts,

^{10. &}quot;The Records of New Amsterdam, from 1653 to 1674, Anno Domini". Edited by Berthold Fernow. New York, 1897. Vol. I, p. 49.

make us fit through Thy mercy, that we may do the duties imposed upon us faithfully and righteously. Enlighten to this end the darkness of our minds, that we may distinguish right from wrong, truth from lies, and give clean and just decision as judges, having our eyes on Thy Word, which is a sure guide to simple wisdom. Let Thy Law be the light upon our paths and a lantern for our footsteps, that we may never leave the fate of justice. Let us remember, that we hold court, not of men but of God, who sees and hears everything. Let respect for persons be so that we may judge the poor and rich, friends and enemies, inhabitants and strangers, according to the same rules of truth, and never deviate from them as a favor to anybody, and whereas gifts to blind the eyes of the wise, keep our hearts from greed, and grant also that we condemn nobody lightly or unheard, but listen patiently to litigant parties, give them time to defend themselves. Thy mouth and word be our council. Grant us also the grace, that we may use the power which Thou hast given us, for the general benefit of the authorities of the church, the protection of the good, and the punishment of the bad. Incline also the hearts of the subjects to dutiful obedience, that by their love and prayers our burden may be lightened. Thou knowest also, Oh, Lord, that the bad and ungodly men usually vilify and speak against Thy holy ordinances, therefore arm us with strength, courage, wisdom and confidence, that we may oppose all sins and bad things earnestly and zealously, and fight for justice and truth until we are dead. Please also, Oh, Good Lord, to bless the resolutions to be taken by us, that they may be carried out, and have effect to the honor of Thy holy Name, for the best of this place, entrusted to us for our salvation. Hear and listen to us, Oh, Good God, in this and in all which Thou knowest is for our good, for the sake of Jesus Christ, Thy dear son, in whose name we close our Prayer, thus: Our Father, &c."11

As has been already shown, it was the intention of the Holland authorities that the municipal government of New Amsterdam should particularly conform to the home institutions of the same character, but Stuyvesant's determination to reserve certain powers to himself and his council served materially to modify in many respects the new tribunal, and its precise scope and powers were left very indefinite and uncertain.

"In Amsterdam there were four burgomasters, each of whom attended three months of the year, in rotation, at the city hall, for the dispatch

^{11. &}quot;Records of New Amsterdam", vol. I, p. 48.

of public business, and the *schepens*, who were nine in number, held the regular court of justice, having civil and criminal jurisdiction, which was almost unlimited. The duties of the *schepens* were especially judicial, while those of the *schout* and the *burgomasters* were chiefly executive, and the three bodies assembled together, constituted a college, for the enactment of municipal ordinances and laws, under the title of 'the lords of the court of the city of Amsterdam'."

In New Amsterdam there was no such division of authority on the part of the newly elected officers. All assembled as a single body and in that united capacity discharged legislative, judicial and executive functions. In the beginning they were disinclined to interfere at all in municipal affairs.

In the Fatherland the schout in every town and village was the chief officer of the board of magistrates. He convoked the court and presided over its deliberations; but he had no vote, although he might express his opinion, his position in an advisory capacity being thus recognized; when he was called upon to act as prosecuting officer, his seat as president was taken by the oldest burgomaster. Practice in this respect in New Amsterdam was different. Arendt Van Hattem was first on the list as named by Stuyvesant, and by virtue of that assumed the presidency of the court. When he was retired from office the eldest burgomaster acted as president until 1656, in which year Stuyvesant ordered that the presidency should be changed every three months. On June 26, 1656, the burgomasters petitioned the governor and council to appoint from the citizens "an intelligent and expert" person as sheriff of the city. This Stuyvesant refused to do, but he made a concession to popular opinion by appointing Nicasius de Sille to succeed Van Tienhoven as schout of the company as well as the city. Furthermore, he enlarged the criminal jurisdiction of the magistrates, and permission was given to them to punish by branding and whipping, unless the

prisoner should appeal from his sentence within twenty-four hours. Finally, in 1660, the people succeeded in having the office of city *schout* and that of *schout-fiscal* made separate, as it was in Holland.

Before 1657, that branch of municipal affairs which especially required the discharge of executive duties had increased so largely that the burgomasters organized a separate court, which met every Thursday. In view of the encroachment made upon their time by the accumulation of duties, or, as they expressed it, "the impossibility of attending to their private affairs," the burgomasters petitioned Stuyvesant to be released thereafter from attending the burgher court, but he refused to grant this request, and the court continued in the discharge of mixed legislative and judicial functions as long as the Dutch held possession of the province.

The proceedings of this tribunal, or, as it was denominated, "the worshipful court of the schout, burgomasters and schepens," were recorded by their clerk or secretary, and as everything which took place before it,—the nature of the claim and of the defense, the statements of the parties, the proof and the decision of the court, with the reasons assigned for it,—were carefully noted and written down, these records supply a full account of the whole course of its proceedings, and furnish an interesting exposition of the habits and manners of the people.

The court met for the first time in the Stadt Huys, February 24, 1653, and this became its regular place of meeting. The Stadt Huys, which was thus distinguished as being the place of the assembling of the first law court in the American colonies outside of New England, was situated on Pearl street, at the corner of Coenties lane, at the head of the Coenties slip, facing the East river. It was a stone building originally put up as a tav-

ern during the time of Director General Kieft. It was fifty feet square, with three upright stories and a two-storied gabled roof, and was conspicuous far down the harbor. Behind it was a Dutch garden of flowers and vegetables, and through this was a pathway leading to *Hoogh strad*, or Stone street, the road to the ferry.

On the second floor of this building, at the southeast corner, was a large chamber which was used for the court room. On the window panes of this room were engraved the arms of New Amsterdam. Above the bench on which the magistrates sat were the orange, blue and white of the West India Company, and the colors of Holland. Here also was the painted coat-ofarms of the city, which was sent over by the directors of the West India Company in 1654. On the wall near the door were suspended fifty leathern buckets, which constituted the fire equipment of the city. In the cupola which surmounted the building hung a bell which was rung for the assembling of the court and for the announcing of proclamations. The bell ringer was a man of many and varied employments. He served as the court messenger, was the village grave digger and the church chorister, and sometimes was schoolmaster. As an attendant of the court he served the magistrates in small ways, keeping the court room in order, providing the magistrates with papers and other things necessary to their work, and ringing the bell at the opening of the court in the morning and for adjournment at noon. From the platform erected in front of the court house he read the proclamations. For many years the bell ringer was Jan Gillisen, familiarly called Kock.

Previous to the establishment of this court, the prison was in the fort, but now a chamber in the rear of the court room was utilized for this purpose. Instructions which were issued

for the keeper of the jail and public prison in January, 1658, show how this part of the judicial authority was carried out.¹²

"I.—The keeper of the jail of this city is bound to receive into the jail all prisoners, who shall be committed or delivered over to him by the Schout, Burgomasters and Schepens or Burgher Court Martial (who are allowed this provisionally and until further order) or in their name.

"2.-The Jailor shall safely keep all prisoners sent to him whether

they be arrested on civil or criminal process.

"3. The Jailor shall sleep every night in his ordinary chamber and not out of it, except by consent of the President; and if he remains out of it without consent, he shall be fined for the first time 20 stivers, for the second time 30 stivers, and for the third time be deprived of his office, even though there be no prisoners in the jail.

"4.—And if it happen that any prisoner break out or escape through neglect of the Jailor, he may be sued therefor, and he must defend him-

self before the Judge.

"5.—Item, the Jailor is bound to note when the prisoners are brought into the public gaol and the name and surname and also when they are discharged, and what cloaths, money, goods they brought with them into the prison and deliver in every Monday a list of the prisoners.

"6.—The Jailor shall also look closely after the prisoners apprehended for capital offenses that they have not knives, irons, rope or other instruments to break out or to injure themselves; the Jailor shall also thoroughly visit the prisoners and the cells at least two or three times a week either by night or by day, and may take as Assistant the Schout's deputy, who is bound to aid him at his request.

"7.—The Jailor also shall not be allowed to relieve prisoners from their fetters nor increase them except by the consent of the *Schout*, *Burgomasters* and *Schepens*, unless through cause of a desire to break out; he may then increase them and secure them by day or by night, and shall immediately make known those, who are secured, to the *Schout* and President.

"8.—Item, the Jailor cannot give those who, for fighting, drawing knives or other arms, are placed on bread and water, or let them have anything else, nor even sell them anything, unless by consent of the Schout, Burgomasters and Schepens.

"9.—The Jailor must not tap nor hold with the prisoners any conversation of games, drinking or otherwise.

"10.—The Jailor shall furnish the prisoners meat and drink according

^{12. &}quot;Records of New Amsterdam", vol. II, p. 294.

to order and shall receive for it according to the rules granted him therefor.

"11.—The Jailor shall inspect and clean the prison every week, so that no stench may arise, wherein the *Schout* and Judge shall pay attention, that it is properly obeyed.

"12. The Jailor shall not allow any one to come to speak to the prisoners, except through the grating, without consent of the Schout and Pracecs.

"13. No person shall speak to the prisoner until he be examined by the Judge for some offense.

"14.—No person shall stay the night with a prisoner for any offense, even though man and wife.

"15.—The Jailor shall separate the prisoners, as much as possible from each other, and arrange them according to their offences and persons; especially the women from the men.

"16.—The Jailor shall not receive any prisoners in the gaol except with consent of the *Schout* and Judge or of the Officer of the *Burgher* Court Marshall.

"Allowance of the Jailor. The Jailor shall have for locking and unlocking each prisoner fl. 6. He shall receive for criminal cases on bread and water per day—: 10. From those confined on civil process he shall receive 20 stiv: per day or as much as the Judge shall please to order. Each week shall be furnished three lbs. of beef, one lb. and a half of pork, one loaf per week, two cans of small beer in summer per day and one can of small beer in winter, pottage and cheese occasionally. Whoever requires more must pay for food pro rata.

"Those, who sit in the prison chamber, shall have a candle every two days, and shall let this burn until nine o'Clock and in winter until eight o'Clock, and no longer; but no fire nor light in the other rooms of the prison."

Sessions of the court were held every two weeks for the trial of minor causes, but sometimes sessions were held as frequently as once a week. The court opened at nine in the morning and adjourned at noon. In case all business was not finished in the forenoon, another session after the mid-day dinner was eaten would be held. The magistrates were bound strictly to the performance of their duties by the force of public opinion and by their own high sense of official honor. Absence from the bench, except for unavoidable cause, was highly reprobated. Fines were

imposed for absence, the regulation in this respect being fixed on a sliding scale as appears from the following:

"Resolved, ratified and concluded in Court, that the previously enacted Ordinance of Schout, Burgomasters and Schepens on the subject of appearance at and absence from the ordinary, extraordinary and other meetings shall be strictly obeyed and observed conformably to its tenor; to wit:—Whoever comes half an hour too late shall pay a fine of ten stivers (12 cents). Whoever comes one hour late twenty stiv.: Whoever is absent altogether forty stiv:"18

After some years the court voted itself a winter recess, or as the record says:

"Whereas the winter festivities are at hand, it is found good that between this day and three weeks after Christmas the ordinary meetings of the court shall be dispensed with."

A salary of three hundred and fifty guilders (\$140.00) was fixed for each burgomaster, and two hundred and fifty guilders (\$100.00) for each schepen. It would appear, however, that these salaries were to a considerable extent merely nominal, for they were paid with no degree of regularity. No funds were set apart by the council for this particular purpose, and the officials found it necessary frequently to appeal to Stuyvesant and his council,—to use their own picturesque and impressive language: -"for the arrears of their salaries so long forgotten, in order that once seeing the efforts of their labors they may be encouraged to still greater zeal." Stuyvesant gave them full permission to draw their arrearages of salary from the city treasury. Inasmuch as there were no monies in the treasury and the board had no authority to raise funds by any plan of taxation, this permission of the governor did not have much practical force. However, it was generally considered that the magisterial position

^{13.} Records of New Amsterdam," vol. III, p. 162.

was a place of great honor and respectability. Although those who held it were poorly recompensed in money for their services, they had the satisfaction of being entitled to be called "My Lord," and elevated positions were reserved for them on ceremonious occasions. In the court room of the *Stadt Huys* soft cushions made their seats very comfortable, and on Sunday these cushions were removed to the church within the fort for the further accommodation of the dignitaries. A pew in the church was set apart for them, and on Sunday they and their families went early to the *Stadt Huys* and proceeded to the church in a procession which was led by the court messenger.

From the outset this court fully demonstrated its practical usefulness, and in a short time it became one of the strongest institutions in controlling and developing the new community. It was a bulwark between the director general and his council on the one hand, and the people on the other; the one representing the commercial interests of the big corporation and the other constituting a purely civic institution. It also served to hold the balance of right and wrong between individuals of the community in their relations to each other, as well as in their obligations to the West India Company.

The establishment of this board of the schout, burgomasters and schepens, and the opening of the court, was only the beginning, the entering wedge. Gradually but surely, municipal control, for which the people had so long contended, went from the hands of the director general into those of the representatives of the commonalty. At first Stuyvesant vigorously claimed the right of interfering whensoever it might please him, in the administration of city matters, but even in the exercise of this prerogative he appears to have mostly confined himself to what related to the general regulation of the city's affairs. In the administra-

tion of justice between individuals, or as against public offenders, he did not long attempt to exercise authority. It is true that at first he was disposed to limit the action of the new court in criminal cases. But as time went on, and the court became more and more firmly established as an unchallenged municipal institution, its criminal and civil jurisdiction became practically unlimited, except that it did not have full power in the infliction of punishment in capital cases.

Simple and summary was the mode of procedure in civil cases, and the determination thereof was the essence of justice. An exhaustive study of this court was made by the late Judge Charles P. Daly, who in his review of the subject dwelt much upon the authorities concerning procedure in the courts of Holland which were followed by the New Amsterdam tribunal. His presentation of the subject first appeared in the introduction to the first volume of the reports of the court of common pleas of the city and county of New York; subsequently it was printed in separate form. From this comprehensive and scholarly digest a clear idea may be had of the court methods of the day, something of the character of the cases brought before the magistrates, and the privileges accorded plaintiffs and defendants.¹⁴

An officer who was known as the court messenger was attached to the court. His principal duty was to summon for appearance any accused individual, at the verbal request of an aggrieved person. Should the defendant thus summoned fail to appear, the cost of the summons was placed upon him, and he forfeited the right to make any objection to the jurisdiction of the court. Then a new citation was issued, and if for a second time the defendant did not appear, additional costs were placed

^{14. &}quot;I. E. D. Smith's Reports XVII," "Historical Sketch of the Judicial Tribunals of New York from 1623-1864," by C. P. Daly.

upon him and he lost the right to make any dilatory explanation or to adjourn or delay the proceeding. For a third time he was cited; if he did not then appear, the case was heard and judgment given in his absence, and he was deprived of all right of appeal or review. It was, however, within the power of the court to summon the defendant for a fourth time and to compel appearance, if, upon hearing the case of the plaintiff, it developed that an appearance of the defendant was essential to a full understanding of the case.

Not often, however, was there any difficulty in securing the prompt attendance of litigants for, as a rule, they usually appeared in response to the first citation. In court the plaintiff was called upon to state his case and the defendant was called upon to make answer. Whenever the two parties differed in material facts, the court might put either or both of them to an oath; and if under oath they were still in conflict, the court might require the examination of witnesses. When a case was thus prolonged it was generally adjourned until the next day, and in the intervening time either party might take the deposition of his witnesses before a notary; or the court might require that the witnesses should be produced before it on the adjourned day to be orally examined under oath. Generally, however, the matter was disposed of upon the first hearing of the parties to the case, without resort to the oath or to the examination of witnesses.

If the matter in controversy was intricate, or if the truth could not be readily discovered, the usual practice was to refer the cause to arbitrators, who were always instructed to bring about a reconciliation between the parties if they could. This practice was not confined merely to cases of disputes about accounts or to differences growing out of contracts, but extended to nearly every kind of case that came before the court. Some-

times the choice of arbitrators was left to the litigants. More often the court appointed him, or directed one of the *schepens* to take the matter in hand and try to effect reconciliation. If reconciliation was not possible, or the litigants would not submit to the final determination of the arbitrators, the one dissatisfied might again bring the matter before the court for final disposition. References of this sort were frequent upon every court day. In fact, the records show that a large part of the business of this tribunal was as a court of conciliation; and it is worthy of remark that, although frequently the amount involved was considerable, or the matter in dispute highly important, appeals to the court from the decision of the arbitrators were exceedingly rare.

When parties preferred, there was a more formal mode of proceeding. After the plaintiff had stated his case, the defendant might require him to put it in writing, and a day was allowed for that purpose. The defendant was then obliged to answer in writing; to this the plaintiff could reply, and the defendant rejoin, and there ended the pleadings. Each party then went before the notary of his choice and had the depositions of his witnesses reduced to writing, a draft or copy of which was retained by the notary in a book kept by him for the purpose. Where it was necessary, a commission, or, as it was called, a requisitory letter, might be obtained for the examination upon interrogation of witnesses residing beyond the jurisdiction of the court; these examinations were made before the judge of the local court where the witnesses resided, and the examinations, after being sealed by the judges, were transmitted to the court having jurisdiction of the cause. When the proofs were complete, they were added to the pleadings, the whole constituting what was called the memorial, which was submitted to the court. Either party was at liberty to inspect this memorial, and had the right, within a certain time,

to call any of the witnesses of his adversary for further examination upon cross interrogatories, in respect to anything contained in their deposition which was deemed material, or to have additional witnesses examined on his behalf in reply. The manner of conducting these subsequent examinations was arranged by the judge.

But as this mode of proceeding was dilatory and expensive, it was in conflict with the innate sense of justice and the natural thrift of the Dutch, and accordingly was rarely resorted to. Most cases were settled by arbitration or disposed of upon a summary hearing of the parties before the magistrates. In respect to the rules of evidence, whenever a paper or document was produced purporting or avowed to be in the handwriting of a party, it was assumed to be his handwriting unless he denied the fact under oath; and merchants or traders might always exhibit their books in evidence, where it was acknowledged or proved that there had been a dealing between the parties, or that the article had been delivered, provided the books had been regularly kept with the proper distinction of persons, things, year, month and day— "a practice which, in the states of New Jersey and New York, survived these Dutch tribunals and has, at the present day, with certain qualifications or restrictions, extended to nearly every state in the Union." Full credit was given to all such books, especially where they were strengthened by oath or confirmed by the death of the parties, and also to memorandums made between parties by sworn brokers.

A leading distinction in evidence was also made between what was termed full proof and half proof. Full proof was where a fact was declared by two creditable witnesses, as of their own knowledge, or was proved by a document or written paper. Half proof was where the fact rested upon the positive declara-

tion of knowledge by one witness only, under which latter head, as weak but assisting evidence, hearsay was allowed, which, in some instances, as in the case of certain dying declarations, was admitted to the force of full proof. As the determining of a case upon the evidence of witnesses was left to the judges, very discriminating and nice distinctions were made in adjusting or weighing its relative force or value.

When judgment was rendered against a defendant for a sum of money, usually fourteen days was allowed for payment of one half, with the remainder to be paid in a month. If, at the expiration of that time, he had not satisfied the judgment, application could be made to the court; then the schout, or the court messenger, went to the delinquent and, exhibiting a copy of the sentence and his wand of office, which was a bunch of thorns, summoned him to make satisfaction in twenty-four hours. If the amount was not then paid, the delinquent was again summoned to pay within twenty-four hours, which involved additional expense. If, again, when that time expired, he was still in default, the messenger, in the presence of a schepen, seized the debtor's movable goods. These he detained for six days, during which time they might be redeemed on payment of the expenses. In case they were not redeemed, notice was given by publicly announcing upon a Sunday, and upon a law day, that they would be sold, and at the next law or market day they were disposed of by auction. In levying upon or selling real estate, or what in the civil law is termed immovable property, a longer term was allowed, and greater formalties were required.

The manner of selling property thus levied upon was after a method common in Holland and elsewhere in Europe. It was selling by "light of candle." At the beginning of the sale a candle was lighted, and while the candle was burning the bidding went

on. When the candle had burned out, the person who had at that moment offered the highest price was declared the purchaser. This method of selling by "light of candle" was common in the other American colonies during the fifteenth and sixteenth centuries. Reference to it will be found in some of the early provincial newspapers where auctions were thus advertised. The practice was brought from England by the English colonists as well as by the Dutch from Holland. This method differed somewhat from the ordinary mode of Dutch auctioneering where an offer to sell the property was made at a price recognized to be beyond its real value, which price was gradually lowered or diminished until a point was reached where one of the bidders agreed to take it.

Civil business in the court was large and varied. Actions for the recovery of debts were generally cases of disputed accounts, or of misunderstandings between the parties, suits by creditors to enforce payments from delinquent debtors forming only a small proportion in the general mass of this business. There were proceedings by attachments against the property of absconding debtors, or of non-residents or foreigners, on which security was required of the debtor intending to depart, to release the property from the attachment; actions to recover the possession of land, or to settle boundaries, "a proceeding somewhat similar to the relief offered by our courts of equity upon a revision of boundaries;" and actions to recover damages from injuries to land or to personal property, or to recover specific personal property as in replevin, or its value as in trover. There were also actions for freight, for seamen's wages, and for rent; for breach of promise of marriage, where the performance of the contract was enforced by imprisonment; for separation

^{15. &}quot;See The Boston News-Letter, 1704-1705-1706, et al.

between man and wife, in which case the children were equally allotted to the parties, and the property divided, after the payment of debts; bastardy cases, in which the male was required to give security for the support of the child, and in which both delinquents might be punished by fine or imprisonment. Actions for assault and battery and for defamation were quasi criminal proceedings, punishable by fine, imprisonment, or both, though the defamer was generally discharged upon making a solemn public recantation before the court, sometimes upon his knees, asking pardon of God and of the injured party. Pecuniary compensation for injuries to person or character could not be enforced; though cases occurred in which the defendant was discharged, it appearing that he had made compensation to the other party in money or goods.

The court also acted as a court of admiralty, and as a court of probate in taking proofs of last wills and testaments and in appointing curators to take charge of the estates of widows and orphans. In 1653 application was made to Stuyvesant for liberty to establish an orphan house, similar to the celebrated institutions of that character which existed throughout Holland. He did not think that such an establishment was necessary at that time, or that the city could afford the expense. Afterwards, in 1655, the burgomasters and schepens renewed their petition; and this time Stuyvesant assented and established the orphanmasters court early the following year.

A peculiar jurisdiction was exercised by the court in summoning parents or guardians, who, without sufficient cause, withheld their assent to the marriage of their children or wards, and in compelling their acquiescence. It also granted pass-ports to strangers, or conferred on them the burgher right, a distinction which, now that it has ceased to be attended with any prac-

tical advantage, is still kept up in the custom of tendering or presenting the freedom of the city to strangers as a mark of respect.

It is an interesting fact that the origin of a fee bill for regulating, by a fixed and positive provision of law, the costs of attorneys and other public officers, can be traced to Stuyvesant. There was much complaint that the notaries were overcharging. On several different occasions Nicholas De Meyer, among others, entered this complaint to the director general and council, and in connection with one of these complaints the following exhibit was made:

For a petition	3	guilders,	charged	by the	notary	14	guilders
For a written conclusion	3	66	46	+ 4	66	12	"
For a replication	2	4.6	••	••	66	12	+6
For a deduction	6	46	44	4.6	44	12	"
For Inventory of documents	3	"	+6	4.6	46	12	44

On January 25, 1658, Stuyvesant put forth a proclamation or ordinance establishing a regular tariff of fees. In England the fees of attorneys and other officers of the court have generally been regulated by the court and not by any public act. In New York, however, the fees of public officers have been a matter of public regulation from a very early period. Ten or twelve years after the restoration of the province to the English, they were regulated by an ordinance of the governor, and afterwards by acts of the general assembly; and there is every reason to believe that this practice, especially as respects the fees of attorneys and officers of the court, was derived from the Dutch. A copy of Stuyvesant's ordinance remains in the records of the burgomasters and schepens:

"Whereas, the Director-General and Council of N: Netherland, have sufficient evidence by their own experience, in certain bills of costs exhib-

ited before them, as remonstrances and complaints of others presented to them, of the exactions by some Scriveners, Notaries, Clerks and other licensed persons in demanding and collecting excessively large fees, and money, for writing from contending persons, almost all sorts of instruments, to the manifest, yea, insufferable expense of judgments and judicial costs, some led by covetousness and avarice so far, that they are shamed to make a bill of or specify the fees demanded, but ask if not extort it from parties in gross. Therefore, the Director General and Council wishing to provide for the better and more easy administration of justice, hereby ordain, enact and command:

"That no person shall henceforward presume to draw up or write any public instruments, unless he be qualified or licensed thereunto as Secretary, Notary or Clerk by the Director General and Council, which qualified or licensed person shall be bound to be satisfied with such fees as are fixed by the Director General and Council therefor and renew every year on the 5th February the established oath to submit themselves unconditionally to the Ordinances enacted, or to be according as occasion requires, enacted, regarding Secretaries, Notaries and Clerks and such like offices, and to obey them in manner as follows:

"Firstly, all Secretaries, Notaries and Clerks or such officials shall keep a regular Record or Journal, in which if necessary or required can immediately be seen what is transacted before them, and for what they make a demand of such fees and render an account.

"Secondly, No Secretary, Notary, Clerk or such like official shall ask money in hand from any person or take or receive any presents, nor compound nor agree with any one about fees or engrossing money to be earned, as such compounding and previous bargaining before final judgment may prove detrimental to the losing party in case he be condemned in the costs and mises of justice; but the aforesaid officials or such shall have themselves paid for the executed instrument according to this Ordinance, or at the termination of the suit by rendering a pertinent bill or specification of what they have written, drawn out, or copied without entering in such bill or specification in gross any extra costs, and all this according to the fees fixed therefor, without demanding or exacting from their principals anything else or more, under penalty of their office and fifty guilders fine on those, who shall be found acting contrary hereunto.

"Thirdly, the Secretary, Notary, Clerk or official shall sign with his own hand and when required seal with his signet all instruments executed before him, on condition of receiving six stivers for his seal in addition to his established fee.

"Fourthly, the Secretaries, Notaries, Clerks and similar officials are bound, when required, to give acquittance or receipts for the earned and paid fee, that the same may be used as needs be.

"Finally and lastly, all Secretaries, Notaries and Clerks shall be bound to serve the poor and indigent who demand it as an alms, Gratis and for God's sake; and may ask and take from the wealthy the following fees:—

"For a plain petition written on one side of the paper 18 stivers, and if the petitioner will have it booked or registered for the copy 12 stivers.

"For a plain demand as above 18 stivers.

"For an answer, reply or rejoinder engrossing two guilders; copying 24 stivers; but should the answer, reply rejoinder, demand or petition require more writing than one half sheet of paper, for each page of 25 to 30 lines with each line of 30 to 36 letters, 30 stivers.

"For a deduction; for each page of 26 to 30 lines with 30 to 36 letters

in the line, 2 guilders.

"For a petition in appeal to be presented to the Director General and

Council two guilders ten stivers.

"For a petition or revision, reformation, reduction, rehearing, purging, complaint, pardon or grant of land, to be presented to the Director General and Council two guilders 10 stivers; if it exceed the second or third page, 24 stivers per page, lines and letters as above.

"For a petition as before, to some inferior Court, 40 stivers or 20 stivers per page, lines and letters as above.

"For a judgment 30 stivers.

"For extracts from their books 20 stivers per page, lines and letters as above.

"For a contract, obligation, assignment, declaration, Case or deed 30 stivers: for the copy 20 stivers.

"For a verbal consultation, the matter being to be brought before the Director General and Council 20 stivers, on condition the Notary is bound to enter the time and matter whereon, in his journal.

"For an inventory of documents to be delivered by parties, 15 stivers.

"For drawing up an interrogatory and entering the queries 10 stivers per page; provided 7 to 8 interrogatories are on one page; for entering the answers on the opposite side also 10 stivers.

"For a days journey with or without their principals, when required four guilders, in addition to conveyance and board; but going with their principals when requested, within the City, village or place, 20 stivers.

"For one attendance at Court, in the absence of, or with, their principals 15 stivers, neglecting it they shall repair the defaults and damage thereof.

"No drinking treats, nor any other extraordinary presents, gifts or douceurs shall be entered in any bill, nor demanded nor asked by the Secretaries, Notaries, Clerks, or similar officials; and these preceding articles shall be published, affixed and observed not only within all places within this n. Netherland Province where men are accustomed to make

publication, but shall be privately read by the Fiscal, Schout and other subaltern Magistrates to the Secretaries, Notaries, Clerks and such like, both now and on the 5th February of every year, not being Sunday, in their respective Boards, and take an oath from them, that they will strictly regulate themselves accordingly, and in case of refusal deprive them of their office and place, expressly forbidding them directly or indirectly to write any instruments for any person, under a penalty of fifty guilders for the first, twice as much for the second time, and for the third offence to be arbitrarily punished at the discretion of the Judge. Thus done at the Assembly of the Honble Director General and Council holden in Fort Amsterdam in N. Netherland the 25th January A. 1658."

When criminal cases were brought before the court, the schout appeared as plaintiff and prosecuted as the representative of the community. If the evidence submitted was sufficient to warrant a magistrate in believing that an offence had been committed, and the schout made a requisition, the offender would be arrested or summoned according to the magistrate's discretion. Where the offender was detected in actual perpetration of the deed, or where, in the judgment of the officer, there was good ground of suspicion against him, and the public interest seemed to demand his apprehension, the schout might make an immediate arrest. In all cases of peremptory arrest the schout was obliged to notify the magistrate within twenty-four hours, and thereupon the magistrate was bound to investigate the matter. Bail was allowed except in cases of murder, rape, arson or treason.

A prisoner could be tried publicly upon general evidence, and this was the general method pursued; or he might be examined secretly in the presence of two *schepens*, when written interrogatories were propounded to him, to which he was obliged to return categorical answers. As the Dutch law then adhered to the general practice of criminal jurisprudence in

^{16. &}quot;Records of New Amsterdam," vol. II, p. 316.

Europe in respect to extorted confessions from offenders, the use of torture and other inquisitorial aids in theory prevailed in New Amsterdam. Torture, however, was not used except where presumptive proof amounted almost to certainty, and the test was very rarely resorted to. In fact, criminal prosecutions were not frequent, and generally the offences were of minor character. Punishments were most frequently by fines, and the money thus collected was distributed in three equal parts to the *schout*, to the court, and to the poor. Imprisonment, whipping, confinement in the pillory, banishment from the city or province, or death, were also methods of punishment; but death could be inflicted only with the concurrence of the governor and his council.

A ponderous dignity rested upon these magistrates, and they were jealous of the slightest indication of any disrespect to themselves or their offices. Instances were frequent where offenders were summoned before the bench for having insulted or spoken insultingly of a magistrate, leaving "a sting not to be borne." Several cases of this kind have been preserved in the records of the court, and they are typically illustrative of the spirit with which the magistrates resented aspersions upon their characters, and of the manner in which they treated upon such offenders.

In September, 1660, Walewyn Van der Veen appearing in court, was informed that it had "come to the ears of the magistrates" that, finding himself aggrieved by a previous judgment of the court relative to a protested exchange, he had "calumniated the Magistrates," saying "they know not what they are—they are mere blockheads, with more of the like." All this Van der Veen denied, and thereupon, the *schout* undertaking to prove the truth of the accusation, further consideration of the subject was postponed until next court day. When the case came again before the court, the *schout*, as plaintiff, said that "the defendant

insulted and calumniated the Magistrates of this City, having spoken of them according to evidence thereof." At the same time he brought witnesses who testified that the defendant said, "the Magistrates knew not what they are, and were only fools and simpletons." Thereupon the officer demanded that the offender should be sentenced to pray for forgiveness and to pay a fine of twelve hundred guilders with costs. After due consideration the court pronounced its judgment:

"Whereas Walewyn Van der Veen insulted the subaltern bench of justice of this City and spoke calumniously of the same, touching which the Officer making his demand and Burgomasters and Schepens having heard the demand and proof of the Schout, adjudge that Walewyn Van der Veen for his committed insult shall here beg forgiveness, with uncovered head, of God, Justice and the Court, and moreover pay as a fine the sum of one hundred and ninety guilders to be duly applied, with costs, and in case of refusal he shall go immediately into confinement."

It appears that the defendant was obstinate and refused to pay the sentence imposed upon him; accordingly, he was ordered by the court "to go into his house in confinement and to be kept there by a Court Messenger until he shall have paid it." At the same time the *burgomasters* and *schepens*, still jealous of their honor, transmitted a report of the case and their judgment to the director general and his council, and requested; "in as much as the insult is destroying the authority and respect of this Court of Law, the support of the Supreme government so that similar occurrences may be prevented." It seems that the offender must have purged himself of the sentence imposed upon him, for he appeared again as plaintiff in a case before the magistrates in the following January.¹⁷

But Walewyn Van der Veen seems to have been persistent in his outspoken criticism of the magistrates. Again, in January,

^{17. &}quot;Records of New Amsterdam," vol. III, pp. 213, 214, 253.

1662, Johannes Nevius, secretary of the court, appeared on court day with another complaint against him; the records have it that Nevius said:

"That because he refused to give the deft. acte of the judgment of the W: (orshipful) Court against Mighiel Tades, as he could not get any pay from the deft., he had been abused by him as a rascal and had said to him—Had I you at another place I would teach you some thing else. He demands, that deft. shall make honourable and profitable reparation for the insult. * * * The Officer (schout) as guardian with the Secretary says, that in consequence of the slander and affront offered by deft. to pltf. in scolding him as a rascal, etc., which affects the honor, being a tender plant; also because this Worshipf¹¹. and Honble Court is not willing to be attended by a rascally Secretary, concluded for a fine of fifty guilders to be applied to the discretion of this W: (orshipfull) Court, that it may serve as an example to all other slanderers, who for trifles and insignificances have constantly in their mouths curses and abuse of other honourable people, whenever things do not go just according to their fancy.¹⁵

What disposition was made of this case does not appear, but in subsequent years Van der Veen was continuously before the court, now as plaintiff or attorney, and again as defendant.

In his official communications, Stuyvesant was punctilious in addressing the board as the "Honourable, Beloved, Faithful, the Schout, Burgomasters and Schepens of the City of New Amsterdam in New Netherland;" "the Most Worshipful, Most Prudent, and Very Discreet, their High Mightinesses, the Burgomasters and Schepens of Nieuw Amsterdam"; "Respected and Particularly Dear Friends"; "Most Worshipful, Gracious and Distinguished" or in some similar phrase. Nevertheless, when occasion seemed to require, he did not hesitate to arraign the board in authoritative words. For example, in 1654, the council ordered that the servants of the farmers should refrain from "riding the goose" at the feast of Shrovetide, but this admonition

^{18. &}quot;Records of New Amsterdam," vol. IV, p. 1.

had been disregarded by those against whom it was directed and the burgomasters and schepens had sustained the offenders. Thereupon the director general sent a communication to the court of the schout, burgomasters and schepens reproving them and reminding them that they were only his subordinates:

"The Director General and Council appreciating their office, authority and commission better than others, hereby notify the Burgomasters and Schepens, that the establishing of an Inferior Court of Justice under the name and title of Schout, Bourgomasters and Schepens, or Commissionaries, does in no wise infringe on or diminish the power and authority of the Director General and Council to enact any Ordinances or issue particular interdicts, especially those which tend to the glory of God, the best interests of the inhabitants or will prevent more sins, scandals, debaucheries and crimes, and properly correct, fine and punish obstinate transactions. What is solely the qualification of Schout, Burgomasters and Schepens, and for what purpose they are appointed, appear sufficiently from the Instruction given to them, by which they have to abide and conform themselves, without henceforth troubling or tormenting the Director General individually about any enacted ordinance, law or order, penalty or punishment issued or executed against and concerning the contraveners thereof by previous resolution of the Director General and Council."19

As in the preceding years of the Dutch administration, most of the offences which the magistrates were called upon to consider were of comparatively minor importance. The moral status of the city had gradually improved, but still there remained much chance for improvement. Drunkenness was common, and not a little of the legislation of the governor and his council and the judicial business of the court related to that offence. Abusive and slanderous language, minor assaults, small violations of municipal ordinances such as regarded the purity of flour and the weight of bread, stealing from the Indians, transgressions of the Sabbath day, and so on,—these and offences of like character made up the bulk of the business of the court. There were many

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^{19. &}quot;Records of New Amsterdam," vol. I, p. 172.

disputes between neighbors, such as affect most village communities, and these the magistrates were called upon to settle, which they generally did by arbitration. Graver crimes were committed, but not frequently. Occasionally there was a murder or a robbery, and now and then offences of sensuality that were of serious character. Some of the cases as recorded in the closing years of Stuyvesant's administration do not read very differently from those of the years of the Kieft regime. Several of them may be quoted here as typical of the judicial methods of arraignment and punishment in the period under consideration.

"Cornelius van Tienhoven, as Sheriff of this City, represents to the Court, that he has found drinking clubs, on divers nights at the house of Jan Peck, with dancing and jumping and entertainment of disorderly people; also tapping during preaching, and that there was great noise made by drunkards, especially yesterday, Sunday, in this house, so that he was obliged to remove one to jail in a cart, which was a most scandalous affair. He demands, therefore, that Jan Peck's license be annulled, and that he pay a fine, according to the Ordinance and placards of the Rt. Honble Director General and Council. The Worshipful Court having seen the remonstrance of the Sheriff against Jan Pack, who being legally summoned, did not appear, decided, on account of his disorderly house-keeping and evil life, tippling, dancing, gaming, and other irregularities, together with tapping at night and on Sunday during Preaching, to annul his license, and that he shall not tap any more, until he shall have vindicated himself."

This was October 19, 1654, and a week later, upon confession of guilt of the accused, the sentence was pronounced. But at the next session of the court, Jan Peck 'by petition' requested leave to tap as the court officer had executed judgment. Decision was then postponed, but a week later the court announced:

"On the instant request both oral and written, of Jan Peck to be allowed to pursue his business as before, inasmuch as he is burthened with a houseful of children and more besides, the Court having considered his complaint and that he is an old Burgher, have granted his prayer, on condition that he comport himself properly and without blame, and not vio-

late either one or the other of the placards, on pain of having his business stopped, without favor and himself punished as he deserve, should he be found again in fault."20

Records of civil suits brought during the year 1653, and typical of hundreds of others of the period, are as follows:

"Roelof Jensen, pltf., v/s Philip Geready, deft., complains that defts. dog has bitten him in the daytime, as may be seen by the wound, and he claims for loss of time and surgeon's fees 12Fl. (Florins or guilders). Deft. says plft, may kill said dog and that pltf. has not lost any time or work on that account; he, deft., has already sent pltf. by his wife 4 lbs. of butter and is still willing to give him as a charity 4 fl. more. The demand of pltf. is therefore denied."21

"'Auken Jansen, pltf., vs. Augustyn Heermans, Deft., demands payment of a balance of one hundred guilders in beavers according to contract for building deft.'s house. Deft. says that pltf. has not fulfilled his contract; secondly, that he has spoiled his timber and the work; thirdly, that now, in short, to prevent all disputes, it was agreed at pltf's request, that he should give pltf. one beaver more, and if pltf. will not accept this, then he claims damages sustained by him. Pltf. denies such agreement; says he will not be satisfied with one beaver, The Court do hereby appoint Pieter Wolfersen and Franz Jansen, both house-carpenters, to inspect work, and if possible to affect a settlement, or otherwise to report their opinion in writing to the Board.22

"Thomas Schondtwart, pltf., vs. Anthony Jansen, deft. says that deft., whose daughter he has married, refused to give him, what he had promsied, and is therefore, according to the written demand, due him. Burgomasters and Schepens having heard the demand and answering concerning the father's promise, refer the same to David Provoost and Hendrick Kip to examine into the dispute, its origin and progress, and the same by all practical means to settle and finally decide, and the said arbitrators are impowered, if necessary, to associate a third person with them, to whose award parties shall be obliged to submit without power to institute any further suit."23

"Elsie Hendrickx, pltf., vs. Jacob Backer, deft. Deft. in default. Pltf. demands, as deft. fails to prove, according to order of 8th December last, that the 2 beavers, which he received for the soap, were returned, and that

[&]quot;Records of New Amsterdam," vol. I, pp. 255, 259, 261, 264. 20.

^{21.} Ibid., vol. I, p. 82.

^{22.} Ibid., vol. I, p. 119.

^{23.} Ibid., vol. I, p. 141.

the rendered judgment may be put in execution. The Court having heard the pltf's request, which consists with law and equity, do order and authorize the Officer to levy execution either on soap or anything else to the satisfaction of the pltf, with costs of suit."

An ingenious, if not altogether magisterial, method of determining justice between plaintiff and defendant, was that adopted by the magistrates in a case brought before them in September, 1655:

"Jan Hackins, pltf. vs. Jacob van Couwenhoven deft. The pltf. demands payment of 1150 fl. on account of a promissory note dated 1st July, 1655, payable in beer and distilled liquor. Dft. says his beer is ready. Pltf. denies that the beer is ready and enquires if it be allowable to mix strong with small beer, and says the beer is not fit to be removed. Couwenhoven denies the same, after adjournment of the session, and then decide. Parties being heard, Jacob van Couwenhoven was ordered to pay pltf. the residue according to contract and obligations; And the beer having been tested after the adjournment of the Court the same was pronounced good. The pltf. was, therefore, ordered to receive the same."²⁵

The question of the prevailing rate of wages, which in modern times has been a matter of legal consideration and judicial determination, appears to have troubled New Amsterdam as early as 1665. At the court session on January 16 of that year this case was presented and decided:

"Adam Oncklebagh, pltf. vs. Freryck Felipzen, deft. Pltf. says, that his wife strung a seawant for the deft. and that the deft. will not pay her for the stringing as much wages, as she gets from others. Deft. says, he agreed with the pltf's, wife to pay four guilders per hundred for the white and two for the black, and that his wife did it again for him after that date. Pltf. denies it. Parties again entering together with the pltf's wife, the pltf's wife says, she made no agreement with the deft., as he pretends, and she is to get from her brother five guilders for the white and two guilders ten stivers per hundred for the black seawant. Burgomasters and Schepens having heard and examined parties decree as the one

25. Ibid., vol. I, p. 360.

^{24. &}quot;Records of New Amsterdam," vol. I, p. 141.

says, that he had agreed with the other and the other denies it, that deft. shall pay to the pltf. as wages for stringing according to the customs heretofore, five guilders per hundred seawant of the white, and two guilders ten stivers, of the black seawant."28

The *schout*, or sheriff, was by far the most important subordinate officer of the colony during this period. His authority in many instances was almost supreme, and his duties were of a varied and important character. The scope of his authority is well indicated by the schedule of instructions which were issued for his government at this time:

"I. In the first place, the Sheriff shall, as the Director General and Council's guardian of the law in the district of the city of New Amsterdam, preserve, protect and maintain, to the best of his knowledge and ability, the pre-eminences and immunities of the privileged West India Company, in as far as these have been delegated by previous Instruction to the Board of Burgomasters and Schepens; without any dissimulation, or regard for any private favor or displeasure.

"2. In the quality aforesaid, he shall convoke the meetings of Burgo-masters and Schepens and preside thereat, also propose all matters which shall be brought there for deliberation, collect the Votes, and resolve ac-

cording to the plurality thereof.

"3. He shall, ex-officio, prosecute all contraveners, defrauders and transgressors, of any Placards, Laws, Statutes and Ordinances which are already made and published or shall hereafter be enacted and made public, as far as those are amenable before the Court of Burgomasters and Schepens, and with this understanding that, having entered his suit against the aforesaid Contraveners, he shall immediately rise, and await the judgment of Burgomasters and Schepens who being prepared shall also, on his motion pronounce the same.

"4. And in order that he may well and regularly institute his complaint, the Sheriff, before entering his action or arresting any person, shall pertinently inform himself of the crime of which he shall accuse him, without his being empowered to arrest any one on the aforesaid information, unless

the offence be committed in his presence.

"5. He shall take all his information in the presence of two members of the Board of *Burgomasters* and *Schepens* if the case shall permit it, or otherwise in the presence of two discreet persons, who, with the Secretary or his deputy shall sign the aforesaid information.

^{26. &}quot;Records of New Amsterdam," vol. I, p. 360.

"6. Which aforesaid Secretary with the Court Messenger are expressly commanded to assist and be serving unto the Sheriff in whatever relates to their respective offices.

"7. He shall take care in collecting and preparing informations to act impartially, and to bring the truth as clear and naked as possible to light, noting to that end, all circumstances which in any way deserve considera-

tion, and appertain to the case.

"8. Item. The aforesaid Sheriff, on learning or being informed that any persons have injured each other or quarrelled, shall have power to command the said individuals, either personally or by the court messenger, or his deputy to observe the peace, and to forbid them committing any assault, on pain of arbitrary correction at the discretion of the *Burgomasters* and *Schepens*.

"9. He shall not have power to compound with any person for their committed offences except with the knowledge of the Burgomasters and

Schepens.

"10. He shall take care that all Judgments pronounced by the Burgomasters and Schepens, and which are not appealed from, shall be executed conformably to the above mentioned Instruction given to the same, according to the stile and custom of Fatherland and especially the city of Amsterdam.

"II. In like manner, that authentic copies of all the Judgments Orders, Actes and Resolutions to be adopted by the aforesaid Burgomasters and Schepens shall be communicated once every year, to the Director General and the Council of New Netherland.

"12. And in case he receives any information or statement of any offences which from their nature, or on account of the offending person are not subject to his complaint, he shall be bound forthwith to communicate the same to the Fiscal (Attorney Genl.) without taking any information himself, much less arresting the offender, unless in actual aggression to prevent greater mischief, or hinder flight in consequence of the enormity of the crime.

"I3. Which being done, he shall, as before, surrender without any delay the apprehended person with the information taken to the Fiscal, to be proceeded against by him in due form as circumstances demand.

"14. In order that the aforesaid Sheriff shall be the more encour-

aged hereunto, he shall enjoy, etc.

"15. Should the Sheriff violate any of these Articles he shall be prosecuted on the complaint of the Fiscal before the Director and Council, to be punished according to the nature of the case."²⁷

^{27. &}quot;Dutch Records;" Letter V, 1652-1663.

Not long after the organization of this court by Stuyvesant, courts of the same popular character were established in several towns on Long Island, and these received powers similar to those granted to that in New Amsterdam. Before this time, Brueckelen had a court of schepens which was dependent on the court at Fort Amsterdam. Now her magistrates were increased from two to four, and Midwout (Flatbush) obtained the right to three schepens, while to Amersfoort (Flatlands) two schepens were granted. In all matters relating to police, peace and security in their several towns-which extended in criminal matters over cases of fighting, threatening, etc.,—these courts had separate jurisdiction. Offences of a graver character were reported to the director and council at Fort Amsterdam. In civil matters these courts could take cognizance of suits to the amount of fifty guilders. In excess of this sum to a further definite amount, an appeal lay to a superior district court. The latter court was composed of magistrates delegates from each town court, and a schout, who acted also as clerk. To this district court was also committed the superintendence of such affairs as were of common interest to the several towns represented in it, that is, the laying out of roads, the observance of the Sabbath, and the erection of churches, schools, and other public buildings. It was also to a certain extent a court of records.

David Provoost, who had been commissioner of Fort Good Hope, on the Connecticut River, was the first schout or sheriff of this district court. In January, 1656, he was succeeded by Pieter Tonneman, who acted until August, 1660, when Adriaen Hegeman was appointed. The salary of the office was two hundred guilders a year, with one-half of the civil fines imposed by the court, and one-third of the criminal fines levied by each town, together with certain fees as clerk for entries and tran-

scripts. In 1661 courts similar to those in Brueckelen, Midwout and Amersfoort were established at Bostwyck (Bushwick) and at New Utrecht. These towns were then formed into a district which was called the "district of the five Dutch towns." The several town courts still continued to exercise their independent jurisdiction, but there was one schout for the district and he resided in Brueckelen.

Courts were established, by virtue of grants from Stuyvesant, among the English settlers in Canorasset, or Rutsdorp, (Jamaica) in 1656, and in Middleburgh (Newtown) in 1659. In 1652 Stuyvesant established a court in Beverwyck (Albany) independent of the patroon's court of Rensselaerwyck. The courts which have thus been enumerated and described, including the patroon courts and the appellate court in New Amsterdam, which was composed of the governor and council, constituted the judicial tribunals of New Netherland until the colony passed into the hands of the English.

From the beginning of their official existence, the burgomasters and schepens of New Amsterdam had demanded that when their terms of service were about to expire they should be allowed to nominate a double number of persons from whom their successors should be chosen, as a partial approximation to the privileges enjoyed in the Netherlands, or, as they expressed it, "in the beloved city of Amsterdam." For a long time Stuyvesant regularly refused this request and continued the old magistrates from year to year, merely supplying vacancies. In 1656, however, he made a partial concession, but only upon the condition that the old magistrates should always be considered as re-nominated, which left it in his power to continue them precisely as he had done before. The condition was accepted by the municipal board, and the nominations were made. But Stuyvesant, being dis-

pleased with some of the new names sent to him, continued the old magistrates until the time for reappointment came around in 1658. Then, at last, he gave way completely, and selected, from a double list of names presented to him, the magistrates who were to serve. The burgomasters and schepens then selected continued in office until 1660, when new nominations and appointments were made. Thereafter, every year in the month of February, this practice was continued until, with the coming of the English, the organization of the court was changed.

During the continuance of the Stuyvesant government the moral condition of the city had become considerably improved, showing very decided advance in this respect over the years of Governor Kieft. On the whole there was probably no community of the English colonies which showed better in this respect than New Amsterdam. The faults and shortcomings attendant upon frontier settlements in every new country were naturally enough present, but less extreme than might have been expected. The offences of most prevalent character were, generally speaking, of minor consequence. Drunkenness still continued altogether too common, but the vice was mostly confined to the lower class of the community. In the records of New Haven is the report of a case of a Dutchman who had been arrested there for drunkenness, and one of his fellow companions argued that this could scarcely be a grievous offence because "at the Mannadoes they were not punished for drunkenness, but used, after they had been drunk, to say that God forgive us, and be merciful to us, and that was enougn."

The authorities of New Amsterdam were not, however, quite so tolerant of the offence as that testimony would indicate. When drunkenness was advanced as an excuse for crime which had been committed, the court generally declared that this was

frivolous. Governor Stuyvesant and his council as well as the city officials were constantly endeavoring to limit the sale of intoxicants to the white people, and interdicted it completely in the case of the Indians.

More often than for more grievous offences, men and women were summoned to court for indulging in abusive and slanderous language, for cutting trees on leased land, for allowing pigs to damage fences, or for minor assaults upon their neighbors. Small quarrels were not infrequent, and public disturbances broke out now and then, mostly caused by intoxication. Municipal ordinances were violated, such as cheating in regard to the size of beer barrels, the purity of flour and the weight of bread, all which were fixed by the laws and ordinances. Instances of wrongfully packing of tobacco, the selling of diseased hogs, robbery of Indians, and the shooting of wild fowls in the forest on Sunday, were often brought up. There was less integrity on the part of the citizens in their dealings with the West India Company. Public feeling against the company was so general that efforts to defraud it were not looked upon with the disfavor that dishonesty among the citizens themselves was regarded. Smuggling, which had been a common practice, still continued, despite the severe ordinance published by Stuyvesant immediately after his arrival in 1647. Efforts to avoid the custom duties became so insistent that the governor was compelled to set special watch to detect offences of this character.

In 1648 a tavern was closed because a man had been murdered there, but criminal cases were very rare, and it was not often that death sentences were pronounced. Most frequently in cases of capital crime, where the death penalty was imposed, the sentence would be commuted at the last moment to banishment, or some like lesser punishment. In the records there are

reports of individuals accused with grave crimes being threatened with the rack in order to extort confession from them, but it does not appear that torture, which at that time was not an uncommon practice in Europe, was here often resorted to.

The general opposition to excessive tippling was shown frequently during the directorship of Stuyvesant by the ordinances which were now and again issued, as occasion seemed to demand. Tavern keepers were obliged to register their names in the office of the company and take out a license. In 1647 there were twelve licensed tavern keepers in the city. Licenses were quickly withdrawn for various reasons. In some instances the keepers did not pay promptly. The excise tax on beer and wine began, and if any disturbances happened in the tavern the license was withdrawn. Gerrit Jansen Clomp had been drinking in the house belonging to Abraham Pietersen, and in a quarrel had been killed. Accordingly, the license of Pietersen to sell liquor either for use in his house or to be carried away, was taken from him.

Under the excise provision the question of patent medicines arose. Pieter Le Febre, a French Huguenot, petitioned for permission to sell a certain water prepared by him for medicinal uses. The permission was given, but a doubt arose in the minds of the council as to the legality of their action, because brewers, wholesale dealers and distillers were not allowed to keep a tavern and sell at retail. In the end, however, an exception was made in favor of the petitioner, and permission was given to him to sell both at wholesale and at retail. This occurred in 1653, and it appears to be the first record of the sale of patent medicines in New Amsterdam.

In the two decades which immediately preceded the end of Dutch rule in New Netherland, the state had been gradually becoming a republic; as the West India Company admitted, it

could no longer be considered a little colony. Struggle for emancipation from the proprietary rule of the company had slowly but surely resulted in larger rights and greater freedom for the citizens. They had succeeded in securing for themselves substantial participation in their own government, answerable to the Fatherland directly rather than to the dominating rule of the company. Still they were far from being satisfied, and in no wise relinquished their efforts to secure more and greater powers and privileges, with the view of ultimately freeing themselves entirely from the company. On the other hand, the company, despite the fact that its colonization plans had largely failed and that it was nearly bankrupt, continued to scheme for holding on to what it claimed as proprietor, in order to further develop the country and to bring about an increase in colonization.

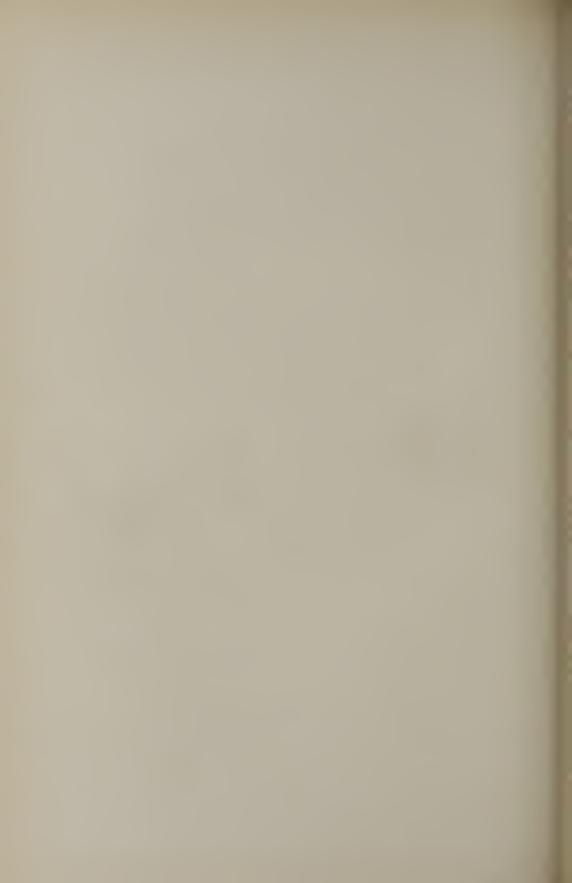
Thus things stood in the autumn of 1663. In addition to the struggle which had been for years carried on against the company, the community had serious troubles which were gradually assuming more and more gravity. For a long time the people of Long Island who constituted part of the colony which was controlled from New Amsterdam had been disaffected. which had been settled by English speaking colonists from Connecticut and Massachusetts were still strenuously opposed to yielding allegiance to the authority of Governor Stuyvesant, and the controversies between New Amsterdam and the authorities of New England were growing in number and becoming more and more acute. Meantime, in England, King Charles and his advisers were plotting for the capture of New Amsterdam, and in these plans the invasion of Long Island by Captain John Scott was an enterprise of considerable moment. Slowly but surely it was developing that the English had determined to secure Manhattan at all cost, and the little community could not fail

to recognize the fate that was in store for it unless it could secure help from the Fatherland.

In this emergency the magistrates of New Amsterdam considered it imperative that they should have the aid of the other communities in the province, and, upon their request, the governor summoned delegates from the various towns to meet in convention. On November 1 the representatives of New Amsterdam, New Harlem, Bergen, and the five Dutch towns of Long Island met in the Stadt Huys in a gemeene landts vergaderingh (a General Convention or Diet). No delegates from the English towns were present at this convention, which drew up a remonstrance to the Amsterdam Chamber of the West India Company in regard to the situation. In April of the following year another convention was called and met in New Amsterdam. Two delegates from each of twelve communities-New Amsterdam, New Harlem, Staten Island, Bergen, the five Dutch towns of Long Island, Wiltwyck, Fort Orange, Beverwyck, and Rensselaerwyck,—were present, and organized a landtsdag or (landts verdager veins). Over this landtsdag Jeremiah Van Rensselaer was chosen to preside. Little was done except to vote a complaint to the West India Company for not protecting the colony against the encroachments of the English. This convention and the one which preceded it the year before were the only two gatherings of their kind that had been called since the establishment of the city government in 1653. Although they accomplished almost nothing, yet the fact remains that in their composition and in their assembling they were plain concessions to the demands of the people for an active participation in the administration of home affairs.

As often as the histories of New Amsterdam and New York have been written, the story of the summer of 1664 has

been told, and there is no call to repeat it in this connection. Toils were closing around the devoted Dutchmen and their imperious governor, and it was only a question of weeks and days when the curtain should finally ring down upon the scenes of the Dutch exploitation of New Amsterdam and New Netherland.



CHAPTER III

DUTCH MAGISTRATES AND LAWYERS



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1626—1664

MEMBERS OF THE GOVERNORS' COUNCILS—POPULAR LEADERS IN THE EARLY MOVEMENTS FOR HOME GOVERNMENT—THE ADVISERS WHO WERE SUMMONED BY KIEFT AND STUYVESANT, THEIR CHARACTERS AND THEIR SERVICES—THE SCHOUTS, THE BURGOMASTERS AND THE SCHEPENS—THEIR INNATE SENSE OF RIGHT AND WRONG, THEIR KNOWLEDGE OF DUTCH LEGAL FORMS AND THEIR WHOLESOME ADMINISTRATION OF JUSTICE—LAWYERS AND ATTORNEYS OF THE PERIOD.

In everything that goes to make up ambition, enterprise, and sterling character generally, the Dutchmen who came to the island of Manhattan and established the city of New Amsterdam and the colony of New Netherland compared favorably with the pioneers in any of the other colonies of America. It has been somewhat the fashion to consider them dull, slow-witted and slothful. Not only has that been to a considerable extent the popular assumption concerning these adventurers, but the same view has been held by historians of prominence who should have been either better informed, less biased, or more judicial in temperament. For nothing could be further away from the actual truth than this estimate of the first Dutchmen in America.

It may be conceded that the settlers from Holland who held Manhattan for nearly half a century and thence spread over the western end of Long Island, the shores of the Hudson and the

interior of New York, were not as a whole highly intellectual. Few of them were of noble rank or came of families of wealth or of military or civic distinction; not many were graduates of universities or colleges, or even had superior education. In this respect they were to a marked degree differentiated from their near neighbors in New England. In that section of the country, the Pilgrims who came to Plymouth in 1620 were not of superior type so far as educational attainments were concerned. But the Puritans who founded the Massachusetts Bay Colony were of different stamp. In the small population which existed in and near Boston in the second quarter of the seventeenth century, there were not less than a hundred or more who had been graduated from the universities of Cambridge and Oxford. This was an unusually large proportion for any colonial settlement in its early history, and these men gave to the new communities a distinctly intellectual tone such as New Amsterdam could in no wise claim.

Comparison between the Dutch colony of New Netherland and the English speaking people of New England and those further south in Virginia and Maryland, has often been made to the point of discrediting the former. Nevertheless, although, as has just been said, the Dutchmen did not have the intellectual attainments of the New Englanders, nor were of high bred and wealthy families like the leaders in Virginia and Maryland, they were not lacking in those best qualities of an energetic manhood which preeminently adapted them for the task which they undertook and carried on for nearly fifty years. That they were strong, self-contained citizens, earnestly engaged in the work of improving their own fortunes, of materially developing a new country, and of laying the foundation for a new body politic, does not admit of doubt.

In the period to which they belonged,—the first half of the seventeenth century,-Holland was one of the great nations of Europe. In national integrity, in commercial enterprise, and in devotion to democratic institutions, it was second to no other nation of Europe. In commerce particularly it was preeminent. Dutch ships sailed the waters of every part of the globe. As the historian Motley has expressed it, "they were the first free nation to put a girdle of empire around the world." Small as the country was, it had above one hundred thousand sailors and upward of three thousand ships, while as many as fifteen or more Dutch navigators had achieved reputation as successful explorers in distant parts of the world. Holland merchants were noted for their enterprise, and had grown rich and strong in dealing with far-away foreign peoples. They had succeeded to the heritage of the old-time merchantmen of Venice. The statesmen of Holland were the peers of any of their contemporaries, and in diplomacy they achieved international success. Willing and able soldiers in defence of the Fatherland, they had won many a hard fought battle, particularly against the Spanish invaders. A code of laws had long been in force in Holland, thoroughly adapted to the right adjustment of affairs between man and man and the control of the community, and these laws were admirably enforced. No taxation without representation was a principle recognized by them long before the English colonists in New England adopted it as a shibboleth. They had a good system of free schools, and were tolerant of all religious creeds and forms of worship. The dissenting Puritans recognized and availed themselves of this latter virtue of the Hollanders when they removed themselves from Scrooby to Amsterdam and Leyden to escape the persecutions of the Established Church of England. As has been well said by one historian, "it was in short the high

water mark in Dutch patriotism, Dutch pluck, Dutch intelligence, Dutch genius." Whether we turn to commerce, to science, or to art, there were cultivation, emancipation from old to new, and triumphs which were historic.

Born and reared in such surroundings and under such influences, the Dutch who came to the new world were in no sense unworthy of their nationality. Although, as has been before noted, not many of them were highly educated, they were thoroughly well adapted to the work which they had cut out for themselves, and then engaged in it with a sound determination, a sturdy honesty, and an enterprise that entitled them to recognition and admiration. In that narrow sphere they emulated the enterprise and the virtue of the people from whom they were derived. In small ships they sailed the waters that skirted the American continent from Maine to Georgia. They navigated the rivers into the interior, and planted settlements on the borders of the Indian territory, far to the Northwest. Their selection of Manhattan as the center of their activities and as the subsequent capital of their province, showed that they possessed foresight to a remarkable degree, and real genius in comprehending the infinite future possibilities of Manhattan Island as the great trading entrepot of the new world.

Soon after the coming of the first colonists, began the agitation for a local self-government free from the autocratic control of the proprietory West India Company, and for the establishment of the laws, customs and privileges to which they had been accustomed in the old country. Then, when the population began to extend beyond New Amsterdam, they promptly organized townships and local courts, and thus laid the foundation for a future political entity. All this was accomplished by men who were in no sense of high class, being

for the most part laborers, artisans, clerks, or, in later years, merchants and traders; and it is even more remarkable that these things were achieved in the face of first the opposition and afterwards the neglect of the strong West India Company of the Fatherland, with its undoubted influence upon the States General, and also the autocratic authority of the governors whom the company sent to rule New Netherland.

Taken altogether, the record of the fifty years of Dutch habitation of New Netherland was very far from being of the negative quality which some historians would have us believe. New Amsterdam was in no wise "the sleepy Dutch village" that it has been sometimes denominated, and the Dutch burghers were not altogether given over to their mugs of beer and their pipes of tobacco. The student of that period will note that almost immediately after the first immigrants had become fairly settled, they began to revolt against the rule of the West India Company, and to start that agitation for self-government which ended in the final forcing of the privileges of suffrage, of local courts, and of municipal government, from the hands of the company. This in itself was a great achievement to be brought about within twenty-five years. It needs no deep insight to comprehend that New Amsterdam was anything but a sleepy village during that period.

The struggle of the commonalty and its able representatives against the exactions of the governors and the determination of the West India Company to control, was always active, never ceasing, and often virulent. It was the work of men who were of sturdy, resolute character, firmly grounded in the democratic principles of the Fatherland, and determined to brook no opposition that stood in the way of their attaining their ends. In New Amsterdam and in the other villages there was continu-

ous agitation in public and in private. Affairs of state,—and they were certainly important affairs, fraught with great things for the future,—were discussed on the street corners, at the tapsters and in the privacy of homes. The meetings of the governor and council were often stormy, and in the representatives of the commonalty, who from time to time appeared before them in defence and demand of the rights of the people, the officials met their peers in argument, patriotic determination and energy. Some of the documents which that struggle for political control brought out have become historic. They were the production of men of natural activity of mind, and of earnest convictions, who were masters of clear methods of expression. In the literary sense they may not have been equal to the didactic and religious tracts which the leaders of New England put out at that time, but as the full expression of manhood, and of wholesome devotion to democratic principles, they will stand comparison with the ablest productions of the kind that the world has ever known. No one can read the famous Remonstrance of the Board of Nine Men against Governor Kieft; the various petitions of the different Boards of Men to the governors, to the West India Company, or the States General; the petition of Kuyter and Melyn to Stuyvesant, in 1647, and the answer of the same leaders to Governor Kieft, making allegations respecting the war against the Indians; without instinctively recognizing the statesmanlike quality of the productions, and the masterly minds of these men in the handling of the subject which was nearest their hearts. Certainly New Amsterdam was a serious minded place at that time, and it cannot be doubted that the views thus strongly expressed by the leaders and preserved in the old records sufficiently voiced the spirit and the temper of the whole people, and stamped them as men of intelligence, enterprise, sobriety and democratic spirit.

"The mental caliber of the New Netherlanders may be tested by reading the bulky volumes which contain translations of their public papers—popular petitions, complaints, and expositions, official journals, reports, manifestoes, and letters. Many of them besides the Remonstrance of 1649 have the high merit of logical arrangement, lucidity and dignity. All have a simplicity in strong contrast to the turgid rhetoric in which the New Englanders often delighted. Some have a flavor of scholarship, literary skill, and individuality which persists even in the alien language. If none of them has as vivid a picturesqueness as the New Englander and the Virginian now and then achieved, on the other hand those that deal with the features and the products of the little-known Western world are much more sane and scientific in spirit than contemporary essays in English. If none has the same sort of historical value as the chronicles of Bradford and Winthrop, some have a descriptive value unmatched in other early colonial records."

"In short, it is not more justifiable to think of New Amsterdam as a slow-witted, illiterate place, than as a drowsy, uneventful place. The more closely we read its chronicles in the words of its own founders and fosterers, the more clearly we perceive how civilized, how modern, it was in its essential habits of mind. If an American of to-day could be transported back two hundred and fifty years he would find himself more comfortably at home on Manhattan than anywhere else. In some of the English settlements he would have the chance to exercise more direct political power, but in none excepting Rhode Island would he find as much personal freedom, and in none at all a general mental attitude, a prevailing temper, as similar to the temper of the America of to-day."

In broader fields of activity they accomplished things that entitle them to more than ordinary recognition. When they were called upon to consider inter-colonial affairs and to act thereupon they exhibited energy and determination as they did in their domestic affairs. Many instances of this character were of more than temporary importance. Their achievement in suppressing the Swedes who had settled in Delaware, a performance in which Governor Stuyvesant had the fullest freedom and responsibility, added much to their prestige, and would have given Holland a

2. Ibid, vol. I, p. 483.

I. "History of the City of New York in the Seventeenth Century," by Mrs. Schuyler Van Rensselaer, vol. I, p. 480.

valuable addition to its territory had it been able permanently to retain New Netherland. Constantly in contention with the New Englanders, they bravely held their own in most particulars. Although in the end the English prevailed in keeping the Dutchmen away from Connecticut, the latter still succeeded in holding Long Island, despite the large English population there, and in all their disputes, whether in warfare or diplomacy, they won the complete respect of their opponents as worthy antagonists.

Despite the foolish conduct of Kieft toward the Indians, the people generally lived on very good terms with their savage neighbors. But when it came to force they were ready, and they were successful in keeping the Indians at a respectful distance save upon those occasions when the natives were provoked by the atrocious acts of Kieft and some of his followers. One of their most noteworthy achievements was the holding of the Hudson River and the Mohawk country against the French and the Indians of that section who were allied with the French. French in Canada recognized that the Mohawk country and the Hudson constituted the key to this section of the continent, and their constant efforts, sometimes undisguised and again insidious, were in the direction of acquiring control of that great highway. Had they succeeded they would have split the country, separating New England entirely from the then known western section, and securing for themselves a control that even the English in later years might have found much more difficult to overthrow than they finally did. In steadily forcing the French back into Canada and preventing them from carrying out their purpose in this respect, the Dutch of New Amsterdam accomplished a great work that was fraught with important results to the English who succeeded them, and for which they have never received the full credit that is their due.

New Netherland was to a marked degree the home of religious and political freedom, and the broadmindedness of its Dutch citizens was repeatedly manifested. In Massachusetts the Puritans hung supposed witches and Quakers, and whipped and banished Roger Williams and his followers from the colony. Many of these offenders against Puritanism found refuge in New Netherland, and rarely were they disturbed for their political or religious views. Anne Hutchinson, expelled from Massachusetts and from Rhode Island, fled to Westchester and there lived undisturbed until she and her children were massacred by the Indians in the uprising provoked by Kieft in 1643. The history of Westchester and Long Island abounds in evidence of the religious tolerance of the Dutch manifested particularly toward the wanderers from New England who, persecuted for their faith, found safe refuge there. The Reverend Francis Doughty came hither from Massachusetts and settled on Long Island, and John Throgmorton with thirty-five families, Anabaptist refugees from Salem, Massachusetts, came to Westchester. Captain John Underhill, famous soldier, was a refugee from the ecclesiastical discipline of New England and took service with the Dutch. Lady Deborah Moody, excommunicated from the church in Salem, found a peaceful home in Gravesend, Long Island. Father Jogues and Father Bressoni, Jesuit priests, were rescued from the Indians and warmly welcomed by the authorities of Albany.

Notwithstanding the belief in witchcraft which then existed in Europe and conspicuously manifested itself in Massachusetts, there was only one trial for an offence of that character in New Netherland or New York in the seventeenth century. Furthermore, in that instance, the prisoners were accused of murder and were tried for that crime and not for witchcraft, although, indeed the matter of witchcraft was brought into the case; and in the end

they were acquitted. Slavery scarcely existed. A few instances there were, but it appears to have been a bondage that did not often bear very harshly upon those who were held. The records of the courts of the period present several cases showing that a man's possession of slaves was not necessarily of a conclusive character, or that it gave him extreme privilege of ownership. One master came to court for permission before he could chastise an offending negro slave, and cases of thievery on the part of the slaves were as apt to be brought before the court for settlement as though the offender was white. For the most part, the Indians were protected from outrage by law and by public sentiment, and the whites who unduly molested them were often severely punished. Of course, there were exceptions to this rule, especially during the governorship of Kieft, when the Indians, by maltreatment, were provoked to reprisal, with the resultant Indian War.

Generally the officials sent out by the West India Company were men of capacity. To be sure, there was the weak Minuit and Van Twiller and the rapacious unprincipled Kieft. Kieft was not wholly inefficient, and Stuyvesant, despite his irascibility, was a man of undoubted power and patriotism who, in a wider field of action might well have been expected to have achieved reputation as one of the world's great pro-consuls. Provincial secretaries from 1626 to 1674, the end of the Dutch occupation, were Isaac de Rasieres, Jan Van Remund, Andries Hudde, Cornelis Van Tienhoven, Adriaen Keyser, Jacob Kip, Carel Van Brugge, Cornelis Van Ruyven, and Nicholas Bayard. English speaking secretaries were George Baxter in 1642 and 1647, Carel Van Brugge in 1654, and Nicholas Bayard in 1657. During this same period of nearly fifty years, the provincial schout fiscals were Jan Lampo, Conraed Notelman, Lubbertus Van Dincklagen, Jacques Bentyn, Ulrich Lupold, Cornelis Van Der Huyghens,

Hendrick Van Dyck, Cornelis Van Tienhoven, Nicasius de Sille, and William Knyffe.

Other members of the governors' councils, commencing with Peter Minuit in 1626, and ending with the final close of the Dutch occupation in 1674, were Peter Blyvelt, Jacob Elbertsen Wissinck, Jan Jansen Brouwer, Symon Dirksen Pos, Raynert Harmensen, Jan Jansen Myndertsen, Jacob Jansen Hesse, Marten Gerritsen Van Bergen, Claes Van Elsant, Jacobus Van Curler, Johannes La Montagne, Brian Newton, Paulus Leendertsen Van Der Grift, Cornelis Van Werkhoven, Peter Tonneman, Allard Anthony, Martin Kregier, Johannes De Decker, Oloff Stevensen Van Cortlandt, Commander Cornelis Evertsen, Commander Jacob Benckes, Captain Anthony Colve, Captain Nicolaes Boes, Captain Abraham F. Van Zeyll, and Cornelis Steenwyck.

The subordinates compared favorably in ability and integrity with their superiors. Several of them ultimately became men of distinction in the province. As members of the council the administration of the law was in their hands until the institution of the board of burgomasters and schepens with judicial powers. So far as reports have been handed down, they were, with perhaps a single exception, upright men of capability. Of the one exception—Van Tienhoven—it must be admitted that, although of thoroughly bad character, none of his contemporaries surpassed him in natural ability for public affairs. Several of them became active and influential in municipal affairs and as justices of the first courts, after the people had wrung from the West India Company the right of popular government.

Isaac De Rasières, opper koopman or chief commissary for the West India Company and secretary of the colony under Minuit, went out from Holland on the ship "Arms of Amsterdam," and arrived in New Netherland, July 27, 1626. He was a French

Protestant whose ancestors, being among those driven out from France by religious persecutors, settled on the river Waal in Guelderland and were named Walloons. He was a protege of Samuel Blommaert, a leading director in the West India Company. In October, 1627, he went as an emissary from New Netherland to Governor Bradford, of the Plymouth Plantation, and Bradford spoke of him as "the Dutch upper comies, or chief merchant, and friend to the governor; a man of fair and genteel behavior." In 1627 or 1628 he returned to Holland and made a written report to Samuel Blommaert concerning affairs in New Netherland. This is the earliest account of the colony of New Netherland and its neighborhood written by an eye witness.²

Nicasius De Sille, who was schout fiscal under Governor Stuyvesant, came of a family whose members had been distinguished in Belgium and Holland. The family was originally of Mechlin, in Belgium. After the revolt of the united provinces against Spain, one Nicasius De Sille went to Amsterdam, and was chosen a pensionaire of that city. In 1587, with other distinguished citizens, he was sent on an embassy to Queen Elizabeth of England. On three different occasions he was an embassador to Denmark, and was also sent on diplomatic business to Germany. He was repeatedly chosen a deputy to the States General, and on two occasions was a commissioner to the army in the field. He died in 1660. Nicasius De Sille, who figured in the history of New Amsterdam, was one of the lineal descendants of this distinguished Hollander. A native of Arnheim, he had a substantial education, and came from Holland in 1653. In July of that year he was commissioned by the Assembly of Nineteen

^{2.} The original manuscript is in the Royal Library at the Hague. A translation by J. R. Brodhead is in the "Collections of the New York Historical Society." Second Series, vol. II, p. 339.

to be the first counsellor to the director general. The letter to Governor Stuyvesant announcing his appointment speaks highly of his accomplishments:

"We have deemed it advisable for the better administration of the government in New Netherland, to strengthen your Council with another expert and able statesman; and whereas Nicasius de Sille, the bearer of these open letters, did apply to us for this appointment, so we have, trusting in the good reports of his character, and confiding in his talents, appointed him First Counsellor to the Director, to reside as such at Fort Amsterdam, and deliberate with you on all affairs relating to war, police and national force; to keep inviolate all alliances of friendship and commerce, and if feasible, to increase these; to assist in the administration of justice, criminal as well as civil, and further, to advise you in all events and occurrences which may be brought forward. We address this to your Honors that you might be informed of this our intention, and to have this Nicasius de Sille acknowledged and respected by all the inhabitants, as in our opinion the service of the Company shall hereby be promoted."

As counsellor he was of great help to Stuyvesant, being well versed in the law, acquainted with military affairs, and otherwise qualified for public service. He enjoyed the fullest confidence of Governor Stuyvesant, and accompanied that official upon the famous expedition against the Swedes in Delaware. In 1656 the burgomasters petitioned the governor and council to appoint from the citizens "an intelligent and expert" person as schout of the city. This petition was refused by Governor Stuyvesant, but he went so far as to appoint De Sille to succeed the discredited Van Tienhoven as the schout of the company, and to serve also as the schout of the city. That position he held for four years, receiving for his services a salary of one hundred florins (\$40) per month and his board. Subsequently he removed to Long Island, and was one of the nineteen first settlers of New Utrecht in 1657.

^{3. &}quot;History of New Netherland", by E. B. O'Callaghan, M. D., LL. D., vol. II, p. 236.

In that place he built one of the first houses, and he was the schout of the town, and in 1674 was secretary of the five Dutch villages. He was a man of exceptional attainments both in science and literature, and was one of the few poets of New Amsterdam who left examples of their work. He wrote a "History of the First Beginning of the Town of New Utrecht," and several of his poems appear in the records of that town.

Few men were more conspicuous, more active or more influential during the Dutch period, than Cornelis Van Tienhoven. Perhaps no one so generally won the ill will of the people, and the record seems to show that he deserved the bad repute which attached to his name. He was a native of Holland, born as some authorities say in Utrecht, and others in Tienhoven, which was a village in the south part of Holland. His first appearance in New Amsterdam was in 1633, when he came out as a bookkeeper for the West India Company. In 1638 he was the colonial secretary and the schout-fiscal. At that time he had a salary equivalent to two hundred and fifty dollars a year and the fees of the office. Gradually he acquired wealth, and had extensive landed property on Long Island. He was a man of great subtlety of mind and strength of will, and it has been correctly said of him that in a very large measure he controlled and directed the policy of the government under Kieft and Stuyvesant. Over Kieft he had almost unlimited influence, and when, in 1647, Stuyvesant came out, he promptly transferred his allegiance to the new governor. He was not able to dominate Stuyvesant as he had Kieft, but his influence does not appear to have seriously weakened. Although probably more unpopular than any other official in New Amsterdam, yet, despite the opposition of the community, he long continued successful and undisturbed in holding power. A man of violent passions, he cherished an intense hatred of the Indians,

and it was considered that more than any one else he was responsible for the outbreak of the Indians in the time of Kieft in 1640. When Stuyvesant was accused by the representatives of the commonalty in 1647, he sent Van Tienhoven to Holland as his emissary to defend him. There his immoral conduct brought him under the condemnation of the authorities, but in the end, although he had accomplished little for Stuyvesant, he was permitted to return to New Netherland. Stuyvesant retired the schout fiscal Van Dyck and appointed Van Tienhoven to succeed him in 1652. The following year he was associated with Arendt Van Hattem as a commissioner to Virginia to treat with the English for a boundary treaty, and the following year he was sent as an agent to negotiate with the New England authorities. His downfall came in 1655. His impure private life and his questionable public conduct compelled the West India Company to order Governor Stuyvesant to remove him from office immediately. He disappeared from New Amsterdam over night, and as his hat and cane were discovered on the shore of the bay, it was believed by some that he had committed suicide, but there has always been a suspicion that he decamped from the country, carrying with him some proceeds of his dishonesty. His conduct as a private individual and as a public official was described, and his character was analyzed in the "Representation of New Netherland."

"The Secretary, Cornelis Van Tienhoven, comes next. Of this man very much could be said, and more than we are able, but we will select here and there a little for the sake of brevity. He is cautious, subtle, intelligent and sharp-witted,—good gifts when they are well used. He is one of those who have been longest in the country, and every circumstance is well known of him, in regard both to the Christians and the Indians. With the Indians moreover he runs about the same as an Indian, with a little covering, and a small patch in front, from lust after the prostitutes to whom he has been always mightily inclined, and with

whom he has had so much to do that no punishment or threats of the Director can drive him from them. He is extremely expert in dissimulation. He appears to all to be asleep, but it is in order to bite, and shows externally the most friendship toward those whom he most hates. He gives everyone who has any business with him,—which scarcely no one can avoid,—good answers and promises of assistance, yet rarely helps any body; but twists continually and shuffles from one side to the other. Except to his friends—the priests,—he is in his words and conduct loose, false, deceitful and given to lying, promising every one, and when it comes to perform, never at home. The origin of the war was ascribed principally to him, together with some of his friends. * * * The whole country, save the Director and his party cries out against him bitterly, as a villain, murderer and traitor, who must leave the country or there will be no peace with the Indians."

Lubbertus Van Dincklagen, the vice-director under Stuyvesant, had acted as schout fiscal for Van Twiller, and was the chief judge of the first court established by Stuyvesant. He was a man of superior education, a doctor of laws, and an able and accomplished jurist. He did not get along at all well with Stuyvesant, and ultimately, in February, 1651, the governor, after a scene of violent dispute, forcibly expelled him from the council chamber and dismissed him from office. But the domineering governor met his match this time. Van Dincklagen was held in high esteem by the authorities in Holland, alike as a man and as a jurist. Orders promptly came to Stuyvesant before the close of the year, to reinstate him in office, but meantime he had moved to Staten Island, and he does not appear to have again participated in the deliberations of the council. In the "Representation of New Netherland" he is thus spoken of:

"The Vice-Director, Lubbert van Dincklagen, has for a long time on various occasions shown great dissatisfaction about many different matters, and has protested against the Director and his appointed Councillors,

^{4. &}quot;Collections of the New York Historical Society," Second Series, vol. II, p. 306.

but only lately and after some others of the chief officers had done so. He was, before this, so influenced by fear, that he durst venture to say nothing against the Director, but let many things pass by and submitted to them. He declared afterwards that he had great objections to them, because they were not just, but he kept silence for the sake of peace, as the Director had said in the Council, that he would treat him worse than Wouter Van Twiller had ever done, if he were not willing to conform to his wishes. This man then, is over-ruled."

Hendrick Van Dyck, a native of Utrecht, came to the New Netherland colony in the service of the West India Company as an ensign as early as 1639 or 1640. It was not long before he acquired considerable property, and ultimately he became a man of large influence. He was active in affairs almost from the time that he arrived in New Amsterdam. In 1642, under Director General Kieft, he had the command of the troops which marched against the Indians in Westchester. In 1644 he was associated with Captain John Underhill in the military enterprise against the Indians of Long Island and Connecticut. Soon after that time he returned to Holland, but came back to New Amsterdam with his commission as schout fiscal in 1646. He remained a member of the council until 1655, but most of the time was in active opposition to Stuyvesant, who in the end dismissed him from office. He died in 1688. Concerning him the authors of "The Representation of New Netherland" had this to say:

"There remains to complete this court-bench the Secretary and the Fiscal, Hendrick Van Dyck, who had previously been an ensign-bearer. Director Stuyvesant has kept him twenty-nine months out of the meetings of the Council, for the reason among others which His Honor assigned, that he cannot keep secret but make public, what is there resolved. He also frequently declared that he was a villain, a scoundrel, a thief and the like. All this is well known to the Fiscal, who does not against him take

^{5. &}quot;Collections of the New York Historical Society," Second Series. vol. II, p. 305.

the right cause, and in our judgement it is not advisable for him to do so; for the Director is utterly insufferable in word and deed."

Pieter Tonneman, who was the *schout* in 1661, 1663 and 1664, was an employee of the West India Company and seems to have been a chronic office holder, holding some place during the most of his life. He was a *schout* in Long Island in 1674 and he held other official positions.

Concerning other members of the council of Stuyvesant the "Representation of New Netherland" has something to say:

"Sometimes the Commissary Adrian Keyser is admitted into the Council, who came here as Secretary. This man has not forgotten much law, but says that he *lets God's water run over God's field*. He cannot and dares not say anything, for so much devolved upon him that it is best that he should be silent.

"The Captains of the Ships, when they are ashore, have a vote in the Council: as Jelmer Thomassen and Paulus Lenaertson, who was made Equipment master upon his first arrival and who has always had a seat in the Council and is a free man. What knowledge these people, who all their lives sail on the sea, and are brought up to ship-work, have of law matters and of the disputes of landsmen anyone can easily imagine. Besides the Director keeps them so in debt that they dare not speak in opposition to him. * * * But they have not fared badly; for though Paulus Lenaertson has small wages he has built a better dwelling house here than anybody else. How this has happened is mysterious to us; for if the Director has knowledge of these matters, he is nevertheless as quiet when Paulus Lenaertson rises as he is inattentive to anybody else, which causes suspicions in the minds of many.

"Monsieur la Montagne had been in the Council in Kieft's time, and was then very much suspected by many. He had no commission from the Fatherland, was driven by the war from his farm, is also very much indebted to the Company, and therefore is compelled to dissemble. But it is sufficiently known from himself that he is not pleased and is opposed to the administration.

"Brian Newton, lieutenant of the soldiers is the next. This man is afraid of the Director, and regards him as his benefactor; and besides is very simple and inexperienced in law. As he does not understand our

^{6. &}quot;Collections of the New York Historical Society," Second Series, vol. II, p. 306.

Dutch language, he is scarcely capable of replying to the long written opinions, except that he can and will say yes."

As has been already seen, it was not long after the colony began that the people manifested their unwillingness tamely to submit to the exactions of the proprietary company and its representatives, the governor and council, and started their demand for a certain amount of participation in legislation and in the administering of the laws governing them. The issue developed leaders, and there came to the front men who quickly, by dint of natural ability, force of character, and strong personality and knowledge of government and of democratic principles, gradually attained to supremacy over the council. Several of these men had already been members of the council, while others sprang from the commonalty, and they exhibited remarkable capacity in meeting the exigencies of the situation and in moulding affairs to the common good. First they appeared as members of the Board of Twelve Men, which Kieft summoned in 1641, and they were followed in 1643 and 1645 by the Boards of Eight Men, and again in the years from 1647 to 1652, under the rule of Stuyvesant, by the Boards of Nine Men; and among them were the signers of the celebrated "Remonstrance" of 1649.

While those men aimed primarily at participation in the municipal and legislative direction of affairs, the ultimate end of their contention was that the people should have part in the work of enforcing the laws and ordinances which controlled the community as well as in making them. In these boards we have the first forms of popular government by representatives of the people generally that ever appeared within the limits of New York and New Jersey. Among those who made up these several

^{7. &}quot;Collections of the New York Historical Society," Second Series, vol. II, p. 305.

boards were many who were not only active and forceful in the early uprising of the commonalty against the autocratic control of the West India Company, but there were men who in future years developed strongly in leadership, in patriotism, and in an unswerving devotion to the best interests of the colony. Their names have become historic in these respects, and they may be accepted as typical of the best element in the communities in which they were conspicuous figures. Their individual histories make no inconsiderable part of the history of the colony as long as the Dutch continued in control. Most prominent among them were several, brief sketches of whose careers in connection with New Amsterdam and New Netherland are here given.

Augustine Heermans, one of the Nine Men and one of the signers of the "Remonstrance," was a native of Prague, Bohemia, and came to New Amsterdam before 1633 in the employ of the West India Company. Afterward he engaged in business on his own account, and made at least one visit to Holland, coming out again to New Amsterdam in 1644 as the representative of the great mercantile house of Gabry of Amsterdam. This connection gave him high standing in the community, and he rapidly acquired property and became a citizen of distinction. He held many offices of importance and was generally looked up to and highly respected. He was a member of the Board of Nine Men in 1647, 1649 and 1650, was sent as an embassador to Rhode Island in 1652, and in 1659 was associated with Resolved Waldron on an embassy to Maryland. Privateering, which was a considerable source of revenue of those days, added to his resources, and in 1649 he was a part owner of the frigate La Garce, which was commissioned to make inroads upon the commerce of the Spaniards. In 1652 he failed in business, but before another year had passed he had been successful in settling with his credi-

tors and regained his prosperity. In 1660 he went to Maryland, where he acquired property. After the English came he could not reconcile himself to the change, but established himself permanently upon his Maryland estate. In that province he became celebrated as the proprietor of Bohemian Manor, a territory of eighteen thousand acres. He died in Maryland in 1686.

Govert Loockermanns was born in Turnhout, Netherland, and came to New Amsterdam in 1633. For a short time he was a clerk for the West India Company, but soon found opportunities for himself in independent occupation. He engaged in trade, and achieved prosperity and high standing in the community. In 1640 he returned to Holland to be married, and the following year came back to New Netherland. After that he was engaged as a shipping merchant and general trader to the end of his life, and ultimately became one of the wealthiest citizens of New Netherland. Beginning with 1642 he traded with the yacht Hope to Fort Orange (Albany), to the South or Delaware River, and as far east as the mouth of the Connecticut River. Closely associated with Kieft, although not a servile follower of that director, he led in the massacre of the Indians at Corlear's Hook in 1653, with Maryn Andriansen, and it has been said that, to the end of his days, he deeply regretted his participation in that affair. His commerce with Holland was extensive, and in addition to his domestic trading he had a brewery. In 1647 he was one of the Board of Nine Men, and again in 1650. He was a schepen in 1657 and 1660, and an orphanmaster in 1663. Acquiring a mastery of the Indian tongue, his services were often availed of as an interpreter. In 1670 he was a lieutenant of the militia company. It appears that he was a man of superior education, bold, adventurous and enterprising, and not over-scrupulous either in his

trading with the Indians or in his more extensive commerce with Netherland.

Hendrick Hendricksen Kip, who was one of the Board of Nine Men in 1647, 1649 and 1650, a signer of the "Remonstrance," and a schepen in 1656, and who, in all the contentions against the directors general, was particularly conspicuous and active, was one of the earliest settlers in New Amsterdam, coming to the colony before 1643. It is believed that he was of noble lineage, probably from the family of De Kype of Bretagne, France, members of whom removed to Holland in the sixteenth century as the result of religious agitation in their native country; the coat-of-arms which he claimed was on the stained glass windows of the first church built in New Amsterdam and on the Kip's Bay house of his descendants. He was of humble condition, being a tailor by occupation, but he was a politician in all his instincts. In the popular struggle against Director Kieft he was one of the leaders, and as influential as any in the community. His strong personality and his unwearying activity made him one of the most remarkable individuals of his time and place. His hatred of Kieft for the massacre of the Indians at Pavonia and Corlear's Hook in 1643 never waned, and he never neglected an opportunity to show it. In August, 1645, when peace was being arranged with the Indians after the Kieft Indian wars, the people were called to the fort to hear and consider the proposals for the treaty between the savages and the Dutch. The record has it that all assented to this summons "except Hendrick Kip, the tailor." When Kieft sailed from New Amsterdam for Holland he, almost alone of the community, would not even join in the adieus which the people paid as a matter of form to the deposed ruler.

Joachim Pietersen Kuyter, who, with Cornelis Melyn, was

one of the great leaders of the people against Kieft, was a native of Darmstadt, where he was born about 1597. He was engaged in the Danish service of the East India Company, and in 1659 came with his family to New Netherland in the interest of the West India Company. From the beginning of his appearance in New Amsterdam he took a prominent position, which he held until the end of his life. In the fight which was waged by the commonalty against Kieft, he was so conspicuous and active that he brought down upon himself the special ill-will of the governor, and that ill-will Kieft was enabled to transmit to his successor Stuyvesant. In spite of his outspoken opinions of Kieft, he was one of the Twelve Men who were summoned for consultation in regard to government affairs in 1641, and was also one of the Board of Eight Men in 1643. He was a man of exceptional ability and possessed of strong intellectual qualities. The petition which he and Melyn sent to Stuyvesant in 1644, and the answer which, also in conjunction with Melvn, he made to Stuyvesant in 1647, answering Kieft's accusations, showed that he was capable of drafting a state paper of extraordinary power.

"Moreover, even just cause, does not oblige rulers to undertake war for their subjects, except it can be done without damage to all or the majority of them. For the office of governor extends rather, over the whole, than over a part; and where a part is greater, there it approximates more closely to the nature of the whole; and in regard to Christ's precept which wills that we be ready to set aside all contentions and discord; consequently still more does it discountenance war; and therefore, says Ambrose—'It is not only generosity in a prudent man to desist somewhat from his right; but it is also profitable and advantageous.' In like manner Aristides—'Men must quietly yield and grant a little, for those are prized who will rather suffer wrong than contention.' Zenophon:—'It becometh even the wise not to commence a war for a great cause.' From all that has been here stated on the subject of war, it can readily be concluded how prudently we must proceed in the matter; and how hazardous

it is to engage in it, especially with so rude and barbarous a people as these Indians are."6

Notwithstanding the enmity of Kieft and his condemnation and sentence by Stuyvesant, the influence of Kuyter with the government of Holland prevailed against the provincial authorities. In 1654 he was commissioned as *schout*, but before he had time to assume the duties of that office he was murdered by the Indians. He owned a farm near Harlem, and also had a city residence.

Oloff Stevensen Van Cortlandt came to New Amsterdam in 1637 in a military capacity. In the summer after his arrival, he became connected with the civil service of the colony, being appointed commissary of cargoes for the West India Company. For eleven years he was thus attached, but then leaving that employ he established himself as a brewer. Ultimately he became a citizen of prominence, and active and influential in all political movements of his day. He was a man of decided public spirit and never-tiring energy, and his abilities were recognized by his being appointed president of the Board of Nine Men in 1650. He acquired large properties and held many offices, the gift of his fellow citizens. During the Stuyvesant period he was most conspicuous in his unrelenting opposition to the governor. He died in 1683.

Thomas Hall was an Englishman born in Gloucestershire about 1614. Coming to America he sojourned for a short time in New England, and then with other pioneers attempted a settlement on the banks of the Delaware upon the lands already claimed by the Dutch. He was taken a prisoner by the Dutch and brought to New Amsterdam. Making his peace with the

^{8. &}quot;Documents Relative to the Colonial History of the State of New York", vol. I. ("Holland Documents", III,) p. 208.

Dutch authorities, he received the rights of the city and remained there, being, with his partner George Holmes, the first English settlers within the present bounds of the state of New York. In 1639, with his partner, he had a large tobacco plantation on the banks of the East River, and in 1654 he owned a property just outside of the city limits on the hilltop near what afterwards became Beekman street. He died in 1670.

Jan Evertsen Bout came to New Netherland in 1634 or 1635. In Holland he had been in the employment of the West India Company, by whom he was sent out to the new world. He was engaged by Michael Paauw, the patroon of Pavonia, on the west side of the North river, opposite New Amsterdam, to take charge of that manor. In 1638 he was one of the first settlers of that section of New Jersey where the town of Bergen was in later generations established. There he resided for several years, but was driven across the river to New Amsterdam by the Indians at the uprising during the time of Kieft. That he was a thrifty, energetic man of affairs is sufficiently indicated by the fact that in 1658 the plantation that he had acquired at Gamoenepa (Communipauw) was valued at \$3,200, a substantial sum in those days. Afterwards he owned a farm in Gowanus, and died there in 1670.

Michael Jansen, another one of the Board of Nine Men and a signer of the "Remonstrance", came from Broeckhuysen, Netherland, in 1632. He first settled in the Van Rensselaer colony, where he was engaged in the fur trade. He appears to have acquired a considerable fortune, and in 1646 was settled in Communipauw, on the west side of the Hudson River. In 1655 the Indian uprising drove him from his farm in New Jersey to New Amsterdam. In the town he kept a tavern for considerable time, but he returned to New Jersey after the Indians had been

quieted. He was one of the first magistrates of New Jersey.

Arnoldus Hardenburg was one of the earliest inhabitants of New Amsterdam, and acquired considerable wealth in trading. He also attained a conspicuous position as a merchant. Jacob Van Couwenhoven had a grant of land in 1645 and acquired wealth as a brewer.

With the establishment of the schout, burgomasters and schepens in New Amsterdam in 1653 began the real existence of law courts, based on the popular will. As has been pointed out in preceding chapters, the burgomasters and schepens combined in their offices municipal and legislative powers with judicial functions. They were the first judges in the colony in any way independent of the proprietory company. It needs only a glance at their names to recognize that they were the leading men in the communities where they lived, and that they were wisely selected by their fellow citizens for their high character and their general knowledge of affairs, and with a full confidence in their integrity and their ability to administer justice righteously. In the list of these officials who held positions in New Amsterdam and the other villages of the colony from the time of the founding of the first court until the departure of the Dutch in 1674, the names of several who already had been the leaders in the popular movement for independent government are recognized. Many of those who attained prominence and activity under the new condition of affairs maintained that prominence and usefulness for the colony even after the English had succeeded to the Dutch in its possession.

Whatever may be said concerning these officials of New Amsterdam was equally true of their contemporaries holding like positions in the other villages and towns of the colony. New

Amsterdam had so preeminently grown in importance and in varied interests that it naturally attracted within its borders the leading and most enterprising citizens of the colony. In the other villages were individuals of no less integrity and patriotism, but they were generally men of less calibre and not so accustomed to the consideration of public affairs. Consequently, except in Rensellaerswyck and Fort Orange, or Beverwyck, comparatively few had the civic reputation that their compeers in New Amsterdam achieved.

Even brief reference to the lives of some of the most notable of these individuals conspicuously discloses the general character of the communities at that time, their capacity for selfgovernment, and the respect with which they regarded their first judicial tribunals. It does not appear that these men were selected for any special reasons of social standing or because they were wealthy; but the choice of their fellow citizens evidently fell upon them because they were particularly qualified for the work of managing public affairs, and of dispensing justice. Among them were members of the best families,—as in later years we have come to regard them,—although at that time the future best families had indeed very little reputation except such as might be exhibited by their immediate representatives in their own individual persons. We find among them not only the merchants and other traders who constituted the dominant element, but also citizens engaged in humbler pursuits. Altogether these burgomasters and schepens very fairly represented the commonalties by which they were chosen to act.

"Here then in the Stadt Huys of New Amsterdam, the worthy merchants and brewers, Indian traders and ship captains, who usually composed the body of *burgomasters* and *schepens* of the little municipality, met and passed their ordinances for the government of the town, or sat

as a court of justice to consider the numerous and sometimes queer controversies which were brought before them. Naturally they were not men who were overstocked with legal lore. Ponderous folios and quartos, in hog-skin, of the civil and imperial laws, of the ordinances of the States General and of the States of Holland, and the well-thumbed 'Rosebooms Rescued' of the Statutes and Customs of Amsterdam, lay before the magistrates, inviting them to lose themselves in the mazes of those abstruse treatises; they preferred however, as a rule, to render their decisions by the aid of what is sometimes known as 'horse sense'. They were fond of settling cases informally by inducing parties to accept their advice before going to trial; failing this they were apt to send the cases for arbitration to one or two good men; whom they would select out of the community, with instructions to reconcile the contending parties, if possible; in one case in the year 1662, where a question of the sewing of linen caps was involved, the court went so far as to appoint certain 'good women' as arbitrators."9

The burgomasters of New Amsterdam from 1653 to 1673 were: 1653, Arendt Van Hattem and Martin Kregier; 1654, Arendt Van Hattem and Martin Kregier; 1655, Oloff Stevensen Van Cortlandt and Allard Anthony; 1656, Oloff Stevensen Van Cortlandt and Allard Anthony; 1657, Allard Anthony and Paulus Lindersteen Van der Grift; 1658, Oloff Stevensen Van Cortlandt and Paulus Lindersteen Van der Grift; 1659, Oloff Stevensen Van Cortlandt and Martin Kregier; 1660, Martin Kregier and Allard Anthony; 1661, Allard Anthony and Paulus Linder-* steen Van der Grift; 1662, Oloff Stevensen Van Cortlandt and Cornelis Steenwyck; 1663, Oloff Stevensen Van Cortlandt and Martin Kregier; 1664, Paulus Lindersteen Van der Grift and Cornelis Steenwyck; 1665, Oloff Stevensen Van Cortlandt and Cornelis Steenwyck; 1673, Johannes Pietersen Van Brugh, Johannes de Peyster and Egidius Luyck; 1674, William Beeckman and Johannes Van Brugh.

The schepens of the same period in New Amsterdam were:

^{9. &}quot;New Amsterdam and Its People," by J. H. Innes, p. 188.

Paulus Lindersteen Van der Grift, Maximilianus Van Gheel, Allard Anthony, William Beeckman, Pieter Wolfertsen Couwenhoven, Joachim Pieter Kuyter, Oloff Stevensen Van Cortlandt, Johannes Nevius, Johannes de Peyster, Johannes Van Brugh, Jacob Stryker, Hendrick Hendricksen Kip, Govert Loockermanns, Adriaen Blommaert, Hendrick Jansen Van der Lin, Cornelis Steenwyck, Isaac de Foreest, Johannes Pietersen Van Brugh, Jeronimus Ebbingh, Jacob Kip, Timotheus Gabry, Jacobus Bancker, Isaac Gravenraet, Jacques Cousseau, Nicolaeus Meyer, Christoffel Hoogland, Lourens Van der Spiegel, Gelyn Verplanck, Francis Rombout and Stephen Van Cortlandt.

Jan Vigne was a son of Guleyn Vigne and Ariantje Culvilje. He was born in New Amsterdam, or came thither at a very early age. His mother, a widow, owned a farm left by her husband, in the lower part of the city, and on this she had a windmill. She died about 1648, leaving this one son and three daughters. One of the daughters, Rachel Vigne, became the wife of the able and notorious Cornelis Van Tienhoven. Jan Vigne occupied the farm which his mother left to him, and was also a brewer and a miller. The court records of that time show him repeatedly as plaintiff for damages caused to the crops on his farm by his neighbor's pigs or cattle, or by mischievous boys. He was a schepen four times between 1655 and 1663.

Arendt Van Hattam, who was a burgomaster in 1653 and 1654, and is named first on the list as head of the municipality, was a highly intelligent business man. Engaged in the peltry trade up the Hudson and into the Indian country, he was a pioneer in this line, and one of the most daring and enterprising men of the community. He was often away from the city on private or public business, and in 1653 was sent with Cornelis Van Tienhoven to Virginia to negotiate a treaty with England. Hav-

ing acquired a fortune, and evidently tiring of his life in this country, he returned to his native Holland soon after 1653.

Martin Kregier was not a wealthy man, but what he lacked in worldly possessions he made up in general activity, patriotism and broad public spirit. He was one of the earliest immigrants to New Amsterdam, beginning in the service of the West India Company. Subsequently he engaged in trading, and for a time was captain of a sloop which he sailed between New Amsterdam and Albany. Then he received a land grant in 1643 and settled down to prosaic town life. He owned a tavern located opposite Bowling Green, and there did a successful business, gradually becoming a man of prominence. But calm business pursuits did not altogether satisfy him, and he became more distinguished for military activity than for civic achievements. He was particularly devoted to military affairs, and gave much of his time to that pursuit, attaining remarkable proficiency as a military captain. In most of the Indian wars he was an officer and displayed much skill. He was captain of one of the militia companies, and in 1657 was sent to the Delaware River to settle the difficulties there. Again in 1659 he was sent to repel the English from the Delaware River, and in 1653 he went up the Hudson River to Esopus in charge of the expedition against the Indians. Director General Stuyvesant held him in high esteem, and he superintended the preparing of the fortifications of the city in 1654, when the English were expected. His taste for frontier life and duty never deserted him, and at an advanced age he left New Amsterdam to settle in the interior near to the Indians upon the banks of the Mohawk, and there he died at an advanced age in 1713.

Few men of his time were more active and conspicuous in the colony than Allard Anthony. He was a merchant, his estab-

lishment being at the corner of Whitehall and Marketfield Streets. Representing a large Holland firm as consignee, he also developed a considerable domestic trade in wholesale and retail. His wealth, his business position and his activity, made him a man of great influence, while by reason of his conspicuousness, perhaps, he was one of the most unpopular men in the community, or, as has been said of him by one writer, "he was rich, influential, conceited and unpopular." Constantly involved in disputes, his law suits with his fellow citizens, in which he was as often defendant as plaintiff, were numerous. The records of some of the cases in which he was involved exhibit him in a light not altogether enviable, and some of them indicate that, to say the least, some of his fellow citizens did not regard him as a man of the highest morality.10 He was a schepen in 1653, and a burgomaster in 1655, 1656, 1657, 1660 and 1661. In his later years, 1662-1673, he was a sheriff, and in that position managed the duties of the office in such a severe and exacting manner that he was nicknamed "the hangman." In addition to his city residence he owned a farm outside the city limits. He died in 1685, in middle age.

Paulus Lindersteen Van der Grift was one of the first pioneers to New Netherland, and held considerable property in New Amsterdam as early as 1644. He became a prominent trader and a man of wealth. In 1646 he was commander of the West India Company's ship the *Great Gerrit*, one of the four vessels that comprised the fleet of Stuyvesant when that governor first came to New Netherland. Stuyvesant appointed him to be equipage master or naval agent, and he was also a military commander, being captain of one of the city companies in 1655, and being held in high esteem for both his military and his naval

^{10. &}quot;Records of New Amsterdam," passim.

experience. In 1648 he made his permanent residence in New Amsterdam, his home being between Broadway and the North River, and he had a farm in the suburbs. He owned a sloop which traded in the waters about New Amsterdam, had a store in which he dealt in dry goods, groceries and other staples, and became wealthy. He was prominent in the councils of the city and province during the Dutch period, being a schepen in 1652 and 1654 and a burgomaster in 1657, 1658, 1661 and 1664. He could not regard the English occupancy with equanimity, and after that became an accomplished fact he sold his property and returned to Holland in 1669.

Cornelis Steenwyck, who was a schepen in 1658 and 1660, was elevated to be a burgomaster in 1662, and served again in that capacity in 1664, 1665 and 1666. He came first to New Amsterdam in the government employ of the West India Company, when he was only a mere youth, but soon started out for himself in trade, keeping first a general store, and gradually becoming interested in foreign trade. He was also a part owner of several ships, and had valuable business connections with Holland, probably more extensive in this respect than any other merchant of the city. He became one of the most distinguished residents of the city, a man of intelligence, and very wealthy. So high did he stand in the opinion of his neighbors and the government that in 1663 the governor and the magistrates asked him to go to Holland to apprise the home authorities of the danger of attack from the English, and to solicit aid for the colony. His business cares were such that he could not leave New Amsterdam at that time, and in less than a year the expected wresting of the city from the Dutch came about.

He was mayor of the city in the years 1668 to 1670, and again in 1682 and 1683, and the fact of his appointment shows

the extent to which the English authorities were willing to go to conciliate their new Dutch subjects. It is also manifest that he enjoyed the entire confidence of his superiors; for not only was he made mayor of the little city, but in Governor Lovelace's absence he was appointed acting governor for the province. As an evidence of his loyal spirit and a specimen of his use of the English tongue, there is on record his speech when an appeal was made to the citizens to aid the work of fortifying the town, to which many of the Dutch objected. "As the governor has been pleased to put the Honorable Mayor and Aldermen for to look to the best of the town and the inhabitants of t'same, what they sall thing fit for the best thereof, he being but ordered sall always be found a willing and faithful subject."

Johannes Pietersen Van Brugh, who was a schepen several years from 1655 to 1665, and subsequently a burgomaster, came to New Netherland about 1650 as a commissary in the employ of the West India Company. He soon left that service and engaged in trade, acquiring a large fortune. He owned a farm outside the city limits and a city residence on Hoogstadt (Pearl street).

Johannes De Peyster, eldest son of Johannes de Peyster and Josine Martins, was born in Holland about 1620. He appears to have come first to New Amsterdam for a brief visit in or near 1645, returning and becoming a permanent settler a few years later. Possessing by inheritance large wealth for that time, and being a man of marked accomplishments and ability, he immediately took position as one of the most substantial and influential citizens. In 1653 he was assessed one hundred guilders, only eleven persons paying more, and was fifth on the list of those designated to "provisionally contribute for putting the city in a state of defence." In 1654 he was fourth of those who offered

money to build the palisades, and in 1655 was sixth on the list of contributors to defray the debt for constructing the city defences. He was among those styled by Sir William Temple "renteneers" -persons having sufficient wealth to produce a fixed income adequate for the support of themselves and their families, and was the first man in New Amsterdam who had a family carriage. For many years he was prominent in public affairs. The first mention of him in this connection after his permanent settlement in New Amsterdam is as cadet of a corps of burghers. In 1655, 1657, 1658 and 1662 he was schepen. Under the first English regime he was an alderman in 1666, 1667, 1669 and 1673. Upon the retaking of the city by Admirals Evertsen and Benckes, in 1673, he welcomed the restoration of the Dutch authority, and was among the influential residents sent for by Admiral Evertsen and advised with respecting the proper persons for official trust. In the following month he was one of the three burgomasters appointed by the council of war, and was also a member of the committee of five to whom were entrusted preparations for defence against the English. But after the declaration of peace between England and Holland and the cession of the province and city to England, he became deputy mayor in 1677. It was said of him by Governor Dongan that he could "make a better platform speech than any other man outside of Parliament." He died about the year 1685.

William Beeckman, who for nine years was a burgomaster, and, during many years after 1679 under the English, was an alderman of New Amsterdam, has been well denominated as "one of the most faithful magistrates of the city," as he was one of the earliest. He was a native of Hasselt Overyssel, where he was born in 1623. He came from Holland with Director General Stuyvesant on the ship *Princess*, and almost immediately upon

his arrival took an active and prominent part in affairs. First he was a clerk with the West India Company, but that limited occupation did not appeal to him, and he engaged in broader occupations. Being a man of some means, he bought Corlear's Hook from Jacob Van Corlear, and in time became one of the largest landed proprietors of New Amsterdam. He was a lieutenant of the burghers corps in 1651, and was a schepen in 1653, 1654, 1656 and 1657. At one time he was sent as commissary to the colony on the Delaware, where he acted as Vice-Director. Subsequently he was sent up the Hudson to be the sheriff at Esopus, and remained there until 1672. Returning to New Orange in 1673, he was again a member of the board of burgomasters and schepens. He married Katherine Van Broogh, and one of his daughters married Nicholas William Stuyvesant, a son of the director general.

Pieter Wolfertsen Van Couwenhoven was in New Amsterdam as early as 1633, and, with his brother Jacob, was engaged in mercantile pursuits and also in milling. Subsequently he was in business apart from his brother, and also was a brewer. Particularly active in all measures for the protection of the settlement against the Indians, he was a lieutenant under Martin Kregier in the expedition against the savages at Esopus, and was conspicuous in the famous pursuit of the Indians when they fled from the soldiers. In his later days he appears to have been unfortunate in business affairs, and the closing years of his life were spent in retirement upon his farm in New Jersey. He was a schepen in 1653, 1654, 1658, 1659, 1661 and 1663.

Timotheus Gabry was a *schepen* in 1660, 1661, 1662 and 1664. He was the secretary of the Dutch colony on the Delaware, and came to New Amsterdam in 1658. He was a man of very good education, and in 1661 was vendue master. By his marriage

to Margaret Stuyvesant, a half-sister of Director General Stuyvesant, he became influential with the governor.

Johannes Nevius was a schepen, and also was a secretary of the burgomasters court. A native of Zoelen, in the Netherlands, he came to New Amsterdam before 1653. His father was a clergyman, the Reverend Johan Neeff, or Nevius, and a graduate of the University of Leyden. The son, Johannes Nevius, was born about 1627, and studied in the University of Leyden. In New Amsterdam he became a merchant and an importer of goods from Holland. He appeared frequently in the courts, being often appointed as an arbitrator, and in 1654 he was a defendant as attorney for his father-in-law, Cornelis de Potter, who was then in Holland or the East Indies, de Potter being sued by Pieter Cornelisen Van de Vien for fitting out the ship "Neuwe Liefde" (New Love). This case was two years in court before it was settled. In December, 1654, Nevius became a schepen to succeed Joachem Pietersen Kuyter, after that official had been murdered by the Indians.

Jacobus Bancker, who was a schepen in 1660, and afterward president of the board for one year, was a store-keeper and a large property owner. Having dealings with firms in Holland, he acquired considerable wealth. He appears to have gone back and forth between New Amsterdam and Holland frequently, and the high esteem in which he was held by the New Amsterdam authorities is shown by the fact that in 1663, when he was in Holland with Jeremias Van Rensselaer, he was instructed to confer with the authorities there in relation to the condition of affairs in New Netherland. In 1664 he was a representative of New Amsterdam in the assembly which Governor Stuyvesant called at that time, and he was one of those who signed the famous capitulation with the English.

Nicholas De Mayer was mayor of the city in 1676, being the second of Dutch birth to whom the mayoralty was intrusted by the English authorities. He came from Holland while still a young man, and in 1655 married a daughter of Ensign Hendrick Van Dyck. Under the Dutch regime he was a schepen, holding that position at the time of the English conquest. After that he served frequently as alderman; indeed, after the granting of the Dongan charter, which provided for assistant aldermen from the several wards, he acted in the latter capacity in spite of the fact that he had occupied the chief magistracy. His trading operations extended to Albany, and he acquired large estates on Manhattan Island. He is said to have owned property in England and Holland also. He died in 1690, leaving six children, and one of his daughters married Philip Schuyler.

Jacob Hendrickszen Kip, who was the first clerk of the court of burgomasters and schepens in 1653, and in subsequent years was a schepen and president of the board in 1674, was a native of Amsterdam, and was born in 1631. Like most of the early settlers, he came to New Amsterdam in the employ of the West India Company, but gradually improved his circumstances, and his natural ability was recognized by his being made a clerk in the office of the provincial secretary. Also he was acting clerk of Stuyvesant's Council. Afterward he left this official position, and became a general trader and engaged in brewing. He became a prosperous citizen, owning a farm and city houses, and died about 1680.

Other magistrates of New Amsterdam who were citizens of good standing were Isaac Gravenraet, who kept a dry goods store, and owned real estate, and was a *schepen* in 1664; Christophel Hooghlandt, who was a respectable property holder, being a *schepen* in 1664 and 1674 and an alderman from 1668 to 1678;

Jacob Stryker, who was a farmer, trader and property owner; Jeronimus Elbingh, who was a merchant with extensive Holland connections, dealing particularly in furs; Jacques Cosseau, a French Huguenot, a *schepen* in 1662, 1663 and 1665, in 1664 was one of the Dutch commissioners to negotiate with the English on the occasion of the occupation by Colonel Nicolls, and a retail and wholesale storekeeper, who became one of the richest merchants in the city; Isaac De Foresst, who came in 1665 and became a large real estate owner, being a *schepen* in 1658; Jansen Hendrick Van der Vien, a merchant of respectability, who died some time after 1677; Jacob Leendersteen Ven der Grift, a *schepen* in 1673, and a patentee of Newtown in 1686.

In the towns and villages outside of New Amsterdam, the magistrates in the last twenty-five years of the Dutch occupation were:

Fort Orange, 1654-1664:—Sander Leendertsen, Pieter Hartgers, Frans Barentsen, Pastoor, Jan Verbeck, Jan Tomassen Van Dyck, Volckert Jansen, Rutger Jacobsen, Andries Herbertsen, Dirck Jansen Croon, Jacob Jansen Schermerhoorn, Philip Pietersen Schuyler, Goosen Gerritsen Van Schlack, Abraham Staats, Adrien Gerritsen, Francis Boon, Evert Jansen Wendel, Gerrit Slechtenhorst, Stoffel Jansen, Jan Hendrick Van Bael, and Jan Kostersen Van Aecken.

WILLEMSTADT, 1673:—Gerrit Van Slechtenhorst, David Schuyler, Cornelis Van Dyck and Peter Bogardus.

SCHENECTADY, 1673:—Sander Leendertsen Glen, Herman Vedder and Barent Janse.

WILTWYCK, 1661-1664:—Evert Pels, Cornelis Barentsen Slecht, Albert Heymans, Tjerck Claessen de Witt, Albert Gysbertsen, Thomas Chambers, Gysbert Van Imbrock, and Jan Willemsen Houghtaling.

SWAENENBURGH, 1673-1674:—Cornelis Wyncoop, Roeloff Kierstede, Wessel Ten Broeck, Jan Burhans, Joost Adriaensen and Cornelis Hoogeboom.

HURLEY, 1673-1674:—Louis du Bois, Roeloff Hendricksen and Adriaen Albertsen Roose.

MARBLETOWN, 1673-1674:—Jan Joosten, Jan Broersen and William Jansen Schudt.

Breukelen, 1646-1674:—Jan Evertsen Bout, Huyg Aertsen Van Rossum, Frederick Lubbertsen, Albert Cornelissen Wantenaer, William Brendenbent, Joris Dirksen, Peter Cornelissen, Joris Rapelje, Teunis Nyssen, Peter Montfort, William Gerritsen Van Couwenhoven, Teunis Jansen, Thomas Verdonck, Teunis Gysberts Bogaert, Thomas Lammertse, and Rem Jansen.

Midwout, 1654-1673:—Jan Stryker, Adriaen Hegeman, Jan Snedecker, Thomas Swardwout, Peter Lott, William Jacobse Van Boerum, William Guiljamsen, William Willemse, Jan Sned, Jan Stryck, William Willemse, William Jacobse Van Boerum, Hendrick Jorissen, William Guilliamsen, Auke Janse and Peter Lott.

AMERSFOORT, 1654-1673:—Elbert Elbertsen, Nicholas Stillwell, Cornelis de Potter, Peter Claessen, Martin Jansen Breuckelen, Coort Stevensen and Abram Jorrisen.

NEW UTRECHT, 1659-1673:—Jan Tomassen Van Dyck, Jacobus Van Corlear, Rutger Joosten Van Brunt, Jacob Hallekens, Balthazaar Vos, Jacob Pietersen, Francis de Bruyn, Thomas Jansen Van Dyck, Hendrick Mattyssen Smack, Jan Van Deventer and Jan Gysbertse Van Meteren.

Boswyck, 1661-1673:—Peter Jansen de Witt, Jan Tilje Letelier, Jan Cornelissen Zeeauu, Ryck Leydecker, Jan Catjouu, Gysbert Teunissen, Barent Joosten, David Jochimsen, John Lequier, Hendrick Barentse Smith, and Volckert Dirckse.

Gravesend, 1650-1674:—George Baxter, William Wilkins,

Nicholas Stillwell, James Hubbard, William Bowne, Edward Brouse, Thomas Spicer, John Cooke, Samuel Spicer, Richard Stillwell, John Emans, Barent Jurisensen, John Tilton, and Samuel Holms.

MIDDLEBURGH, 1652-1673:—Thomas Hazard, Robert Coe, Richard Gildersleeve, Henry Feake, Richard Betts, William Palmer, John Coe, Edward Jessup, Ralph Hunt, Jonathan Fish, Samuel Coe, John Layton, Francis Swaine, William Bloomfield, John Cochrane, John Burroughs, John Ransden, and Jonathan Hazard.

FLUSHING, 1648-1673:—John Townsend, John Hicks, William Toorn, John Underhill, Thomas Saul, Robert Terre, William Lawrence, Edward Farrington, William Noble, William Hallett, John Hinchman, Francis Bloetgoet, and Richard Wildie.

HEMPSTEAD, 1647-1673:—Richard Gildersleeve, John Seaman, John Hicks, ——— Coe, Daniel Whitehead, John Strickland, William Washburn, Robert Ashman, Robert Forman, Robert Jackson, John Smith, and William Jacobs.

RUTSDORP, 1659-1673:—Benjamin Coe, Samuel Matthews, Richard Everett, John Townsend, Nathaniel Denton, Andrew Messenger, Robert Coe, Daniel Denton, John Strickland, Thomas Benedict, John Carpenter and Robert Ashman.

OYSTER BAY, 1652-1673:—John Richbell, Robert Ferman, Nicholas Wright, Thomas Townsend, and Nathaniel Coles.

HUNTINGTON, 1673-1674:—Joseph Whiteman, Isaac Platt, Jonas Wood, and James Chichester.

Seatalcot, 1673:—Richard Woodhull, and John Bayles.

SOUTHHAMPTON, 1673:— Edward Howell, and Joshua Barnes.

Easthampton, 1673:—John Mulford and John Stretton. Southold, 1673:—Thomas Hudson.

HAERLEM, 1660-1673:—Jan Pietersen Slot, Daniel Terneur, Peter Cressau, Johannes la Montagne, Philip Cassie, Dirck Claessen, Michael Muyden, Johannes Verveelen, Resolved Waldron, David des Marest, Joost Van Oblinis, Arent Hermans, Jan Petersen Harling, Adriaen Cornelissen, Jacob Pietersen de Groot, and Wolfert Webber.

WESTCHESTER, 1656-1673:—Thomas Wheeler, Thomas Newman, John Lord, John Smith, Josias Gilbert, Nicholas Bayley, Thomas Veall, Thomas Mollinaer, Edward Waters, Robert Heustis, William Betts, John Barker, Nicholas Bayley, Edward Jessup, Joseph Palmer, and Richard Panton.

MAMARONECK, 1673:—John Busset, and Henry Disbrow.

FORDHAM, 1673:—Johannes Verveelen, Michael Bostiaensen, and Valentine Claessen.

Eastchester, 1673:—John Hoit.

Staten Island, 1664-1674:—David D'amarex, Pierre Bilyou, Walraven Lutten, Tyse Barentse, ——— Leerdart, Jan Willemse, Gideon Marlet and Nathan Whiteman.

Comprised in the foregoing list are the names of many individuals who were conspicuous in all the activities of their generation. They were energetic and influential in moulding the life of the communities in which they lived; they laid the foundations for the future commercial and industrial greatness of New York; they were wise administrators of the law and some of them in their later years were wise law-givers; they never ceased in protesting and warring against the autocratic rule of self-constituted authority, and in their agitation for democratic institutions they sowed the seed of independence which ripened into fruitage a century later. Many of them bore names which have been historic in themselves and their descendants. Their worth as citizens and their standing among their neighbors is shown by

the fact that they were repeatedly called to office, several of them four or five times in a period of ten years. This is noticeable in the case of the magistrates of Fort Orange, and even more so of those in the English towns of Long Island and Westchester.

The local schout fiscals during this period were:

RENSSELAERSWYCK—Jacob Albertsen ver Planck, Adriaen Van der Donck, Nicolas Coorn, Gerrit Van Slechtenhorst, Cornelis Teunissen, and Gerrit Swart.

Esopus—Roeloff Swartwout, Matthys Capito, William Beeckman, and Isaac Gravenraet.

HAERLEM—Johannes la Montagne, and Resolved Waldron.

WESTCHESTER—Thomas Wheeler.

Breukelen—Jan Teunissen, David Provoost, Peter Tonneman, Peter Hegeman, Adriaen Hegeman, and Jacob Stryker.

FLUSHING—William Harck, John Underhill, John Hicks, William Hallett, Tobias Feke, and John Mastine.

FORT ORANGE—Jan Daniels, Jacob Teunissen, and Hans Vosch.

WILLEMSTADT and RENSSELAERSWYCK—Andrew Draeyer.

SCHANEGTEDE—Jan Gerritsen Van Marcken.

New Amsterdam—Joachem Pietersen Kuyter, Jacques Cortelyou, and Pieter Tonneman.

New Orange, 1673:—Anthony de Milt.

New Utrecht-Nicasius de Sille.

GRAVESEND—James Hubbard, Richard Gibbons, John Morris, John Cooke, and Charles Morgan.

MIDDLEBURGH—Thomas Newton, Elias Bagley, and Thomas Pettit.

THE FIVE ENGLISH TOWNS—William Lawrence and Francis Bloodgood.

SOUTH SEATALCOT, HUNTINGTON and EAST SOUTHOLD, 1673:—Isaac Arnold.

STATEN ISLAND, 1673:-Peter Biljou.

All these magistrates, as far as can be gathered, were men of intelligence, of independence, and with one or two exceptions, of high moral character. Moreover, their knowledge of law, their effective methods of procedure and their inerrant sense of right and wrong were remarkable, and the records of their court proceedings are a revelation of their judicial capacity.

"Upon perusing them (the records) it is impossible not to be struck with the comprchensive knowledge they display of the principles of jurisprudence, and with the directness and simplicity with which legal investigations were conducted. In fact, as a means of ascertaining truth, and of doing substantial justice, their mode of proceeding was infinitely superior to the more technical and artificial system introduced by their English successors. None of these magistrates were of the legal profession. They were all engaged in agricultural, trading and other pursuits, and yet they appear to have been well versed in the Dutch law, and to have been thoroughly acquainted with the commercial usages, customs and municipal regulations of the city of Amsterdam. This is the more remarkable, as a knowledge of the Dutch law at that period was by no means of easy acquisition. Though the principles and practice of the civil law prevailed in Holland, it was greatly modified by ancient usages; some of them of fcudal origin, others the result of free institutions, which had existed from the earliest period; and it had engrafted upon it a number of public regulations or ordinances, emanating from the different provinces, as district and partly independent sovereignties, which had originated either as feudal privileges or sprung up during Spanish domination, or were the result of the long struggle and many political changes which the low countries had passed through before the general establishment of free institutions.

"In every town and village in Holland, moreover, there existed usages and customs peculiar to the place, which had the force of law, and were not only different in different towns, but frequently directly opposite. The Dutch law, in fact, was then a kind of irregular mosaic, in which might be found all the principles as well as the details of a most enlightened system of jurisprudence; but in a form so confused as to make it exceedingly difficult to master it. That these magistrates should have had any general or practical acquaintance with such a system at all, was

scarcely to have been expected; but that they had is apparent, not only from the manner in which they disposed of the ordinary controversies that came before them, but in their treatment of difficult questions as to the rights of strangers, their familiarity with the complicated laws of inheritance, and the knowledge they displayed of the maritime law while sitting as a court of admiralty."

It was not long before the town grew in size and importance, and the diversified interests of individuals resulted in more frequent court appearances, so that litigants found it necessary to employ others to represent them, sometimes a relative, and after a while professional notaries; thus notaries and advocates in time became busy legal functionaries. The advocates were Adriaen Van der Donck, Cornelis de Potter and Francis le Bleu. The notaries were Dirck Van Schelluyne, David Provoost, Johannes de Decker, Matthias de Vos, Pelgram Clock, Tielman Van Vleck, Solomon Le Clair, Walewyn Van der Veen and Allard Anthony in New Amsterdam; Lodowyck Cobes in Willemstadt and John Gerritsen Van Marck in Schenectady. All these men, evidently possessed of a good education, must have had much to do with establishing the mode of legal proceeding in New Amsterdam, and it may not be doubted that the magistrates, who for the most part were not of trained legal minds, often called them in for consultation. Particularly the services of Van Schelluyne and De Sille were utilized in this capacity.

Foremost among the advocates was Adriaen Cornelissen Van der Donck, or, as he generally appears in the older records, Adriaen Van der Donck. He is especially noteworthy in this history as the first legal practitioner in New Amsterdam. He was an educated Dutch gentleman, and a native of Breda, where he was born in the last year of the sixteenth century, and where

^{11. &}quot;Historical Sketch of the Judicial Tribunals of New York, from 1623-1846," by C. P. Daly.

both he and his father were free citizens. Studying in the University of Leyden, he was a doctor of civil and canon law when, in 1641, he came to New Netherland in the service of Kiliaen Van Rensselaer. For several years he was the schout fiscal of Rensselaerswyck. In 1646 he took out a patent for land north of New Amsterdam, on the banks of the Hudson River, covering the territory which in modern times became the city of Yonkers. His manor was known as Colon Donck, or Donck's Colony. After that he resided in New Amsterdam, where he became a leading and active citizen. He was especially prominent in the popular movement for independent local government, and was the strenuous opponent of Directors Kieft and Stuyvesant. He was an accomplished advocate and a man of wide learning and knowledge of affairs, and the early records of Rensselaerswyck and New Amsterdam are abundant in reference to him. It is said of him that while schout fiscal he "evinced always a disposition to protect the colonists, and in the prolonged controversy in New Amsterdam he always took sides with the people against the administration." In 1649 he was one of the Board of Nine Men and, as has already been noted, was one of the delegates deputed to present the grievances of the colonists to the States General in Holland. While yet in Holland, in 1643, he petitioned the West India Company for license to practice his profession in New Amsterdam upon his return to America. The answer to this petition was contained in a letter of the directors of the company to Director Stuyvesant, July 24, 1653.

"Whereas Master Adrian van der Donck has presented to our Board two petitions namely that having received his degree at law by the University of Leyden and been admitted to the bar by the Court of Holland he may be permitted to practice as Attorney and Counsellor in New Netherland and further to be allowed to examine the documents and papers in the Secretary's office there to complete his already begun De-

scription of New Netherland; we have resolved on the first to allow, that according to the usages of this country he may practice there as advocate by assisting every one, who desires it, with his advice, but as to pleading in court, we cannot observe, that at present it is proper to allow because we do not know whether there is somebody there of sufficient ability and the necessary qualifications, who before being admitted to practice there, must report to you (or as the case may be to us) to act and plead against the said Van der Donck."¹²

Particularly prominent among the notaries was Dirck Van Schelluyne, who came to New Netherland in 1641. He had previously practiced law at the Hague. He was commissioned as a notary in New Amsterdam in 1650, his commission reading:

"The States General of the United Netherlands. To all those who shall see these or hear them read, Health, Know ye: Whereas we have received the humble petition to us presented by Dirck Van Schellyne Notary here at the Hague, to empower him to exercise said Notarial profession at the Manhattans and further throughout the whole of New Netherland in all existing and future colonies thereof. Therefore, on account of the good report made to Us of Dirck van Schellyne aforesaid, and of his utility and fitness, fully confiding in his industry and fidelity. We, the aforesaid Dirck van Schellyne have appointed and authorized, and do hereby appoint and authorize, to exercise the aforesaid profession of Notary at the above named Manhattans and further throughout the whole of New

^{12.} Van der Donck is still remembered in historic annals as the author of one of the earliest books descriptive of New Netherland, "Beschryunge Van Neeuvv Nederlant". The full title page of this work is as follows:

[&]quot;Description of New Netherland (as it is to-day) comprising the nature, character, situation and fertility of the said country; together with the advantageous and desirable circumstances (both of their own production and as brought about by external causes) for the support of people which prevail there; as also the manners and peculiar qualities of the Wild Men or Natives of the Land. And a separate account of the wonderful character and habits of the Beavers, to which is added a Conversation on the condition of New Netherland between a Netherland patriot and a New Netherlander, described by Adriaen Van der Donck, Doctor in Both Laws, who is at present still in New Netherlander. In Amsterdam, at Evert Nieuwenhof's, Bookseller, dwelling on the Rusland (street) in the Writing-book, Anno, 1655."

He was also author of the famous "Remonstrance of New Netherland" addressed to the West India Company in 1649, "Vertoogh von Nieu-Nederland Weghens de Gheleghentheydt, Lruchtbaerheydt, en Soberen Staet desselfs."

Netherland, in all actual and future Colonies, where the petitioner keeps his domicile, or may on request of occasion, repair, giving him full power, to draw up all Declarations, Testaments, Codicils, Instruments, preliminary Informations, Mercantile and Marriage Contracts, and other acts, stipulations necessary of use to the Commonalty, and morcover to do all things that a good and faithful Notary may and ought to do, on condition that he shall be bound to take at Our hands the usual oath for the due execution of his office, which, being done, We request and command the Director and Council, and all other Our subjects in the aforesaid countries of New Netherland, who are now or may be hereafter commissioned thither, whom this may in any wise concern, to acknowledge the aforesaid petitioner for Notary and to offer him no let or hindrance." 18

Early in the administration of Stuyvesant, the independent character of Van Schelluyne brought him into trouble. He entered a protest against Stuyvesant, saying that he "dared not prepare any more writings, but commended matters to God." From the records he appears to have been an experienced and skillful practitioner. He was appointed court marshal or high bailiff to levy executions and enforce processes, and after his complaint to the States General that body sent positive orders to Stuyvesant to allow him to discharge the functions of his profession without interference.

Solomon La Chair was another notary of prominence and a pleader in the courts. He was as frequently a defendant as he was attorney for plaintiff, a man of much spirit and notoriously contentious, being frequently arraigned and fined for opposing the officers in the discharge of their duties, for violating municipal ordinances, and for other offences. Repeatedly he was sued for rent, for wages of his servants, or for other debts. In 1661 he prosecuted an action to establish a claim for the magistrates of the town of Gravesend as successors to the title of Lady Deborah

^{13. &}quot;Documents Relative to the Colonial History of the State of New York," vol. I, p. 384. The original of this document is in the Acte Book of the States General in the Royal Academy at the Hague.

Moody against Evert Pieters and Hermanus Vedder as agents of Gysbert Van Opdyck. The claim was for the region known as Coynen, or Coney Island. La Chair won the suit, and his bill for his services was twenty-four florins, about \$10.00. The following entry in his account book shows how he was paid:

"Furnished a copy of this acc't to the Schout of Gravesendes on 16 Jan'y 1662, who promised to pay me in gray peas, at Bearer's price. Rec'd of Wilhelm Wilkins, in paym't of above acc't, eight shekels of gray peas."

La Chair died insolvent in 1662 or 1663. His will was made and signed December 3, 1662, when he was "lying sick abed." It was produced in court by his widow, Anneke Rysens, March 29, 1663. In the records there is an account of the surrender by his wife to his creditors of the property that he left.

David Provoost was one of the most conspicuous men of his time in New Amsterdam. Born in Holland in 1608, he came out first in 1624, and returning to Holland married there a wealthy wife whom he brought back to America in 1634. In the service of the West India Company he held the very important positions of commissary of provisions and inspector of tobacco, the latter being especially important, as the culture of tobacco was already assuming considerable value. He received grants of land, so that he became a large property holder and was also in business as a general trader. In 1642 he was sent to the Connecticut River to take charge of the Dutch Fort Good Hope, and there he demonstrated remarkable abilities as an able and resolute commander, resisting the English at all times, in the most forcible manner, and proving a veritable thorn in their flesh. Returning to New Amsterdam in 1647, he became the schoolmaster, and at once was foremost in the political affairs of the time. In 1652 he was the second notary which the city had ever had, a

position which was then one of grave importance and exceedingly profitable to its holder. He was also an attorney and counselor. In the same year he was one of the most active members of the Board of Nine Men, and the sessions of that body were held in his schoolroom. His status in the estimation of Governor Stuyvesant is shown by the fact that despite his taking part in the movement for popular government, he was commissioned in 1653, with Johannes de La Montagne and Govert Loockermans, to meet the New England commissioners for the purpose of investigating the charges which had been promulgated that the Dutch were conspiring with Indians against the English. In 1655 he was appointed to be the first schout of Breukelen, and removed to Long Island, and in the following year he was the schout of the three allied Dutch towns-Breukelen, Amersfoort and Midwout—and this position he held until the time of his death, two years later. He was a man of fine culture, had a thorough civil and military education, and spoke Dutch, French, English and Latin, and several Indian tongues; a man who would have added distinction to any community in which he lived.

Tielman Van Vleck was particularly identified with Bergen county, in New Jersey, where he had a patent of land in 1678, and removed thither, being the first schout of Bergen. He was a Dutchman from Bremen, and in 1650 he appeared as attorney for the heirs of Barent Baltus. Walewyn Van der Veer was in frequent trouble with the authorities, generally for contempt of court. Pelgrum Clock, among his varied experiences, was once suspended from practice for six weeks for indifference to the law of a subordinate court, and was also sued for board. Matthias de Vos, besides being an advocate, was also bailiff; in 1656 he was a keeper of the city hall, and soon afterward marshall.

Law books available for the use of these magistrates, attor-

neys and notaries, were not numerous, but they were sufficient to the needs of the time, and some of them of a profound character which has left an ineffaceable stamp upon modern legal thought and practice. Principal among them were: "Dissertation de usu Juris Romani," by H. Fagel, and J. C. Van der Hoop. "Charterbock der Graven Van Holland," by F. Van Mieris Groot. "Placaat Boek van de Staaten Generaal van Holland, en van Zeeland," by Deeken Cau en Scheltus. "Actes des Etats Generaux de 1600." "Recuielles et Mis en Ordre," by M. Gachard Bruzelles. "Des Driot des Belgis et Gaulois." Mayers' "Institutions Judiciaries." "Practyke ende Handebouck in Criminele Saecken," by Joost de Damhouder Van Brugghe. "Placards, Ordinances, and Octroys of the Honorable, Great and Mighty Lords, the States of Holland and West Frieslant." "The By-Laws of Amsterdam." "Rooseboom's Recuil van Weeten en Kostumen der Staden Amsterdam, 1656." "The Dutch Court Practices and Laws." "The Admiralty Laws" of Wisburte. Van Sutphen's "Nederlandse Practyke." At the last meeting of the burgomasters and schepens, November 9, 1674, prior to the final surrender to the English, a record was made of the books in the hands of the court as follows:

Inventory of Books, &c., found in the City Hall and by order of the Court given in care to the President Burgomaster Johannes van Brugh the 9th November 1674:—

- 1. Book in folio entitled—Placards, Ordinances and Octroys of the Honble Great and Mighty Lords the States of Holland and West Vrieslant.
 - 1. Ditto. Placards, Ordinances and the Lords States General.
 - 1. Ditto. Handbook of Imperial and Civil Laws.
 - 1. Ditto. Bye Laws of Amsterdam.
 - 3. Ditto in quarto; Consultations and Opinions 1 2 and 3d parts.
 - I. Ditto. Dutch Practice and Laws.
 - 1. Ditto. Wisbuste Admiralty Laws.14

^{14. &}quot;Records of New Amsterdam," vol. VII, p. 139.

CHAPTER IV

ENGLISH INSTITUTIONS SUPERSEDE THE DUTCH







Duke of York and Albany, afterward James II King of England

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DUKE OF YORK AND ALBANY.

(1633-1701).

From whom the State and the cities of New York and Albany took their names. Succeeded his brother Charles II. in 1685 as King of England, and took the title of James II. of England and James VII. of Scotland.

CHAPTER IV

ENGLISH INSTITUTIONS SUPERSEDE THE DUTCH

1664-1683

GOVERNOR RICHARD NICOLLS TAKES THE COLONY FOR THE DUKE OF YORK—THE "DUKE'S LAWS" ADOPTED BY THE HEMPSTEAD CONVENTION—NICOLLS' POLITIC RULE—THE NEW CODE IMPOSED ONLY UPON THE ENGLISH SPEAKING COMMUNITIES—DUTCH TOWNS PERMITTED TO RETAIN THE CUSTOMS AND LEGAL METHODS INSTITUTED BY THEM—A DUAL LEGAL SYSTEM—THE ENGLISH CUSTOM OF TRIAL BY JURY IS INSTITUTED—RECORDS OF THE FIRST JURY TRIALS—A BRIEF RETURN TO DUTCH RULE UNDER COLVE.

In 1664 the colony of New Netherland passed from the hands of the Dutch into the possession of the English. By a patent dated March 22 of that year, King Charles II. gave to his brother James, Duke of York and Albany, heir-presumptive to the throne and Lord High Admiral of the navy, for the consideration of forty beaver skins a year, a vast extent of property on the American continent. By this patent the King granted:

"All that part of the maine Land of New England beginning at a certain place called or known by the name of St. Croix next adjoining to New Scotland in America and from thence extending thereof to the furthest head of the same as it tendeth Northward; and extending from thence to the River Kinebeque and so upwards by the shortest course to the River Canada Northward. And also all that Island or Islands commonly called by the several name or names of Matowacks or Long Island situate lying and being towards the West of Cape Cod and the Narrow Higansetts abutting upon the main land between the two Rivers there called or

known by the several names of Connecticut and Hudson's River, together also with the said River called Hudson's River and all the Land from the West side of Connecticut to the East side of Delaware Bay. And also those several islands called or known by the Names of Martin's Vineyard and Nantukes otherwise called Nantuckett," &c.

Also by this patent the King gave power:

"unto our said dearest brother James, Duke of York, his Heirs, Deputies, Agents, Commissioners and Assigns, full and absolute power and authority to correct, punish, pardon, govern and rule" the inhabitants of those parts and places, "according to such Laws, Orders, Ordinances, Directions and Instruments as by our said Dearest Brother or his Assigns shall be established; And in defect thereof, in case of necessity, according to the good discretions, of his Deputies, Commissioners, Officers or Assigns respectively; as well as in all causes and matters Capital and Criminal as civil both marine and others; So always as the said Statutes, Ordinances and proceedings be not contrary to but as near as conveniently may be agreeable to the Laws Statutes & Government of this Our Realm of England, And saving and reserving to us Our Heirs and Successors the receiving, hearing and determining of the Appeal and Appeals of all or any Person or Persons of in or belonging to the territories or Islands aforesaid in or touching any Judgment or Sentence to be there made or given. And further that it shall and may be lawful to and for our Dearest Brother his Heirs and Assigns by these presents from time to time to nominate, make constitute, ordain and confirm by such name or names stile or stiles as to him or them shall seem good and likewise to revoke, discharge, change and alter as well all and singular Governors, Officers and Ministers which hereafter shall be by him or them thought fit and needful to be made or used within the aforesaid parts and Islands; And also to make ordain and establish all manner of Orders, Laws, Directions, Instructions, forms and ceremonies of Government and Magistracy, fit and necessary for and Concerning the Government aforesaid, so always as the same be not contrary to the laws and statutes of this Our Realm of England but as near as may be agreeable thereunto. And the same at all times hereafter to put in execution or abrogate, revoke or change not only within the precincts of the said Territory or Islands but also upon the Seas in going and coming to and from the same as he or they in their good discretions shall think to be fittest for the good of the Adventures and Inhabitants there. And We do further of Our Special Grace, certain knowledge and mere motion grant, ordain and declare that such Governors, Officers and Ministers as from time to time shall be authorized and appointed in the manner and form aforesaid shall and may have full power and

authority to use and exercise Martial Law in cases of Rebellion, Insurrection and Mutiny in as large and ample Manners as Our Lieutenants in Our Counties within Our Realm of England have or ought to have by force of their Commission of Lieutenancy or any Law or Statutes of this Our Realm."

Colonel Richard Nicolls, a valiant soldier, who had long been engaged in the service of the Duke of York, was appointed to be Deputy Governor over all the property covered by this patent. Governor Nicolls arrived in the bay before New Amsterdam with a fleet of four vessels in August, 1664, and after a few days of negotiation the city surrendered to him without resistance, September 5. The duke's commission gave to his deputy authority "to perform and exact all and every the powers" granted by the royal patent. The proclamation which Nicolls and his associate commissioners, Cartwright and Carr, issued to the inhabitants of New Amsterdam from the fleet in New Utrecht Bay, promised that all those who submitted to his majesty's government should have the protection of his laws and justice, "and all other privileges with his majesty's English subjects." Terms of capitulation were entered into between Colonel Nicolls and Director General Stuyvesant, and by these it was agreed that those of the inhabitants who desired might return to Holland, while those who remained should continue to enjoy the rights of citizens. These ordinances of capitulation, twenty-four in number, were signed September 6, 1664, by Johannes De Decker, Nicholas Varleth, Samuel Megapolensis, Cornelis Steenwyck, Jacques Cousseau and Oloff Stevensen Van Cortlandt, on the part of the Dutch, and Robert Carr, George Cartwright, John Winthrop, Samuel Wyllys, John Pynchon and Thomas Clarke, on the part of the English.

^{1. &}quot;History of the State of New York," by J. R. Brodhead, vol. II, p. 651. A parchment duplicate of this patent is in the State Library in Albany. The original is in the Public Record Office in London.

By the terms of capitulation the particular stipulations as to the legal status of the Dutch and the future judicial administration of the colony were comprised in the following articles:

"XI. The Dutch should all enjoy their own customs concerning their inheritance.

"XII. All publique writings and records, which concern the inheritances of any People, or the reglement of the church or poor, or orphans shall be carefully Kept by those in whose hands now they are, and such writings as particular concern the States General may at any time be sent to them.

"XIII. No judgment that has passed any judicative here shall be called in question; but if any conceive that he hath not had justice done him, if he apply himself to the States General, the other party shall be bound to answer for the supposed injury.

"XVI. All inferior civil officers and magistrates shall continue as now they are (if they please) till the customary time of new elections, and then new ones to be chosen by themselves, provided that such new chosen magistrates shall take the oath of allegiance to his majesty of England before they enter upon their office.

"XVII. All differences of contracts and bargains made before this day, by any in this country shall be determined according to the manner of the Dutch."

Immediately upon assuming the government of the colony, Nicolls changed its name as well as that of the city; New Netherland and New Amsterdam both became New York. Carefully adhering to the terms of capitulation, he proceeded cautiously, particularly refraining from any interference with the municipal government and the administration of justice. In less than a week after the surrender, the burgomasters and schepens resumed their meetings and directed municipal affairs, while the administration of justice went on as it had during the seventeen years of Stuyvesant's control. The burgomasters and schepens could not, however, refrain from expressing their sorrow over

^{2. &}quot;History of the State of New York," by J. R. Brodhead, vol. I, appendix, p. 762.

the change which had removed them from under the flag of their beloved Holland. At once they addressed a letter to the directors of the West India Company announcing the capitulation, and giving the reasons why they deemed it best to accept the situation and remain under the rule of the English.³

"The Court resolves to write the following to the Lords Directors: Right Honble Prudent Lords, the Lords Directors of the Honble West India Company, Department of Amsterdam. Right Honble Lords,

"We, your Honrs loyal, sorrowful and desolate subjects, cannot neglect nor keep from relating the event, which thro' God's pleasure thus unexpectedly happened to us in consequence of your Honrs neglect and forgetfulness of your promise."

Then follows an account of the capture of the city by the English.

"Meanwhile, since we have no longer to depend on your Honours' promises of protection, we, with all the poor, sorrowing and abandoned Commonalty here must fly for refuge to the Almighty God, not doubting but He will stand by us in this sorely afflicting conjuncture and no more depart from us: And we remain—Understood—your sorrowful and abandoned subjects—was signed,

"Pieter Tonneman, (Schout) Paulus Leenderzen van der Grift and Cornelis Steenwyck (Burgomasters), Jacob Backer, Tomotheus Gabry, Isaack Graevenraat, and Nicholaas de Meyer (Schepens). Done in Jorck heretofore named Amsterdam in New Netherland A^o. 1664 the 16th September."

Without delay the governor went forward to the organization of a new provincial government. Captain Matthias Nicolls, a lawyer from Islip, Northamptonshire, who had come out with the expedition, was appointed secretary of the province. Robert Needham and Thomas Delavall, from England, Thomas Topping and William Wells, of Long Island, and Secretary Nicolls, con-

^{3. &}quot;Records of New Amsterdam," vol. V, pp. 114-116.

stituted the Council. Cornelis Van Ruyven, who had been secretary of Stuyvesant's council, and Johannes Van Brugh, *schepen*, were sometimes called in to advise the council in regard to the affairs of the Dutch citizens with which the English naturally were not well versed.

Having peacefully accomplished the subjection of New Amsterdam, the governor turned his attention to the Dutch settlements up the river, as it was most important, without delay, to bring these also under the Duke's authority. Commissioner Cartwright was sent up the Hudson to do this work. The people of Fort Orange offered no resistance to the English, but peacefully accepted the new condition of things. The name of the town was changed to Albany, and Cartwright granted that all the inferior officers and magistrates should continue in control of local affairs. In Esopus, some slight opposition was manifested, but the inhabitants soon yielded, and they were reconciled by the considerate treatment which was accorded them, especially in the retention of their local officers, among them being William Beeckman as schout.

In February of the following year, 1665, new magistrates were chosen for New Amsterdam according to the Dutch law, and they, with the inhabitants of the city, were compelled to take an oath of allegiance to their new masters. Some resentment was manifested at this demand; some of the inhabitants would not take the oath, but the majority acquiesced in the situation. Pieter Tonneman, the *schout*, refused to submit and returned to Holland; Allard Anthony was chosen to succeed him, and the other new magistrates were: Cornelis Steenwyck and Oloff Stevensen Van Cortlandt, *burgomasters*; Timotheus Gabry, Johannes Van Brugh, Johannes de Puyster, Jacob Kip, *schepens*; and Allard Anthony, *schout*.

Governor Nicolls brought with him a code of laws for the colony. It was long believed that this code, famous as the first set of laws prepared for the colony, was drawn up by Clarendon, lord chancellor of England and the first lord of the Committee on Foreign plantations—the father-in-law of the Duke of York. That statement is no longer credited however, documents and letters to the contrary having effectually disproved it.⁴

The governor called a delegate convention to meet in Hempstead, Long Island, in February, 1665, to consider these laws. The convention was made up of two delegates from each town of Long Island and Westchester county, some of whom had been members of the Dutch general assembly in the preceding year. Its composition was as follows:

New Utrecht, Jacques Corteleau and Younger Hope; Gravesend, James Hubbard and John Boone; Flatlands, Elbert Elbertsen and Roeloffe Martense; Flatbush, John Striker and Hendrick Gucksen; Bushwick, John Stealman and Guisbert Tunis; Brooklyn, Hendrick Lubbertsen and John Evertsen; Newtown, Richard Betts and John Coe; Flushing, Elias Doughty and Richard Cornhill; Jamaica, Daniel Denton and Thomas Benedict; Hempstead, John Hicks and Robert Jackson; Oyster Bay, John Underhill and Mathias Harvey; Huntington, Jonas Wood and John Ketcham; Brookhaven, Daniel Lane and Roger Barton; Southold, William Wells and John Youngs; Southampton, Thomas Topping and John Howell; Easthampton, Thomas Baker and John Stretton; Westchester, Edward Jessup and John Quimby;

The convention was in session two or three days, but little was permitted to it save to accept the code substantially as presented by the governor. It was a mere pretense of popular par-

^{4. &}quot;Clarendon Papers."

ticipation in legislation, serving only to promulgate the will of the royal proprietor of the province. Some discussion arose over its measures, and there were some declarations of disapproval, but these were of slight weight. Nicolls made a few minor concessions to the opinions expressed by the delegates, and the code was then accepted without dissent. Before adjourning the convention voted a loyal address to the Duke of York accepting the patent, acknowledging dependence upon the patentee, and concluding:

"We do publicly and unanimously declare our cheerful submission to all such laws, statutes and ordinances which are, or shall be, made by virtue of authority from your royal highness his heirs and successors forever."

The code then adopted and promulgated has been ever since known as "The Duke's Laws". It was the first comprehensive code of the colony, and although subsequently set aside, it was the foundation of the legal and judicial institutions which New York province and state have since possessed. Largely compiled from the laws which were then in existence in the other English colonies of America, it was based on the English constitution, and in it almost no consideration was given to Dutch proceedings or laws. One peculiarity conspicuous in it was the adoption of the Mosaic laws from the code of the Connecticut Colony, of which they formed a constituent part; in the New York code, however, the Scripture readings and the Bible texts cited in the original were dropped. At the session of the general court of Connecticut, of New Haven, April 3, 1644, the act adopting the Mosaic laws was passed as follows:

"It was ordered that the judicial lawes of God as they were delivered by Moses and as they are a fence to the morall law, being neither typicall nor cerimoniall, nor had any reference to Canaan, shall be accounted of morrall equity and gen^rlly bind all offendors, and be a rule to all courts

in this jurisdiction in their proceeding against offendors, till they be branched out into particulars hereafter."

Like the codes of New England, the new code for New York was arranged in an alphabetical order of subjects treated. general provisions were as follows:6

Particular provision was made for town governments. several towns were authorized annually on the first or second day a subsequent amendment, four overseers. These overseers were of April, to elect a constable, and at first eight, and afterward, by the assessors of the town, and with the constable were empowered to make regulations respecting matters which concerned the police and good government of the town. The constable and

^{5. &}quot;Records of the Colony and Plantation", "New Haven Colony Records of 1638-1649," by Charles J. Hoadley, p. 130.

^{6.} A parchment copy of this code, certified by Matthew Wren, Secretary of the Duke of York as "concordat cum originale," now faded with age and indistinct, is in the New York State Library. A copy is in volume I of patents in the office of the Secretary of State in Albany. It has been reprinted in full in the "Report of the Regents of the University on the Boundaries of the State of New York," 1873 and in "The Colonial Laws of New York," vol. I, pp. 6-73. When the code was promulgated in March, 1665, copies were sent to the several ridings constituting Yorkshire. The Easthampton copy has been preserved in the office of the town clerk. Another copy was filed in the clerk's office of Hempstead, but when North Hempstead was erected from Hempstead it was filed in Roslyn in the office of the clerk of the former town. It is now owned Roslyn in the office of the clerk of the former town. It is now owned by the Long Island Historical Society. The Easthampton copy was printed in the collections of the New York Historical Society, 1811, vol. I, p. 305. The amendments to the code are in "The Colonial Laws of New York", vol. I, pp. 73-99. The Easthampton copy bears this title: "Established by the Authority of his Majesties Letters patents granted to his Royall Highness James Duke of Yorke and Albany; Bearing Date the 12th Day of March in the Sixteenth year of the Raigne of our Sovereigne Lord Kinge Charles the Second

eigne Lord Kinge Charles the Second.

[&]quot;Digested into one Volume for the publicke use of the Territoryes in America under the Government of his Royall Highness. "Collected out of the Severall Laws now in force in his Majesties

American Colonyes and plantations. "Published March the 18th Anno Domini 1664 at an General meeting at Hemsted upon Longe Island by virtue of a Commission from his Royall

Highness James Duke of York and Albany given to
"Colonel Richard Nicolls Deputy Governor bearing date the Second day of Aprill 1664."

overseers were required annually to appoint two of the overseers to make the rate for building and repairing the church, for the maintenance of the minister, and for the support of the poor. From the overseers the constable selected the jurors who attended the courts of sessions and assize. Every town, at its own expense, must provide a pair of stocks for offenders and a pound for cattle, besides prisons and pillories in places where courts of session were held.

The principal courts established by these laws were the town court, the court of sessions, and the court of assize. The town court was composed of the constable and overseers. It had cognizance of all causes of debts, and trespass under five pounds; and the justice of the peace was authorized, but not required, to preside in the court. A court of sessions was decreed for each riding of Yorkshire, and a court of assize, composed of the governor and other officials, was constituted as the highest judicial tribunal.

All actions of debts, accounts, slander, and actions on the case concerning debts and accounts, were to be tried in the jurisdiction where the cause of action arose. Debts and trespasses under five pounds were to be arbitrated by two persons selected by the constable of the place, and, if either party refused, the justice of the peace should choose three arbitrators, whose award should be final. All actions or cases from five to twenty pounds were to be tried at the sessions, from whence there should be no appeal. Any person falsely pretending greater damages or debts than due, to vex his adversary, should pay treble damages. If the action be entered and the parties compromise it, yet the agreement should be entered by the clerk of the court.

Upon the death of any person, the constable and two overseers should repair to the house of the deceased to inquire after

the manner of the death, and whether he left any last will or testament. But no administration should be granted, except to the widow or child, until the third session after the person's death. The surplus of the personal estate was divided as follows: one-third to the widow, and the other two-thirds among the children, except that the eldest son should have a double portion.

All amercements and fines, not expressly regulated by law, were to be imposed at the discretion of the court.

No justice of the peace who had sat upon or voted in any case, should have any voice in the court to which appeal was made. Parties appealing must give security; and in criminal cases also give security for good behavior until the matter should be decided.

No arrest could be made on the Sabbath, or "day of humiliation for the death of Charles the First, of blessed memory," or the anniversary of the restoration of Charles the Second, except of rioters, felons, and persons escaped out of prison. Persons necessarily attending courts should be exempt from arrest. All arrests, writs, warrants and proclamations were to be in the name of his majesty.

All assessments were to be made by the constable and eight overseers of the parish, proportionable to the estate of the inhabitants; and the justices of the peace were exempt from assessments during their continuance in office, except only for payments to the church.

Persons of known ability, when imprisoned, must pay for their support till the second day of the next session after their arrest, and longer if there be a concealment of property.

To rebuke an officer with foul words, so that he depart through fear without doing his office, should be taken for an assault. A servant or workman convicted of assaulting his master or dame should be imprisoned.

No foreigner or stranger could have attachment against an inhabitant without giving security for costs.

No justice of the peace, sheriff, constable or clerk of the court while in office should be permitted to be attorney in any case, unless assigned by the court on request.

No Christian should be kept in bond, slavery or captivity, except persons adjudged thereto by authority, or such as had willingly sold or might sell themselves.

Every town must set out its bounds within twelve months after they were granted, and it was required that once in three years the oldest town should give notice to the neighboring towns to go the bounds between their towns and to renew their marks; the time for perambulation to be between the twentieth and the last day of February, under the penalty of five pounds for neglect thereof. Owners of adjoining lands were required to go the bounds between their lands once a year if requested, under penalty of ten shillings.

No person was permitted to follow the business of brewing beer for sale, but those skilled in the art.

The name and surname of every inhabitant in the several parishes must be registered; and it was provided that the minister or town clerk should truly and plainly record all marriages, births, and burials, in a book to be provided by the church-wardens.

It was provided that no body should be buried except in public places, and in the presence of three or four of the neighbors, one of whom should be an overseer of the parish.

Persons punishable with death were those who should in any wise deny the true God and his attributes, or be guilty of any of the following crimes: wilful and premeditated murder; slaying another with a sword or dagger, that hath not any weapon to defend himself; laying in wait; poisoning or any other such

wicked conspiracy; lying with any brute beast, (and the beast to be burned); man-stealing; taking away life by false and malicious testimony, denying his majesty's right and title to his crown or dominions; treacherously conspiring or publicly attempting to invade or surprise any town or fort within this government, or resisting the king's authority by arms; children above the age of sixteen, and of sufficient understanding, smiting their natural father or mother, unless thereto provoked or forced in self defence.

Married persons committing adultery with a married man or woman, both were to be grievously fined and punished, as the governor and council or court of assize should think meet, not extending to life or member. Any man "lying with mankind, as he lieth with a woman," both to be put to death, except when either party might be under fourteen years of age or be forced.

Cattle and hogs must be marked with the public mark of the town and the private mark of the owner, and horned beasts marked upon the horn.

Every cause of £5 or under must pay a tax of 2s. 6d.; of £10, 5s.; from £10 to £20, 10s.; and for every £10 more 2s. 6d.

"Whereas the public worship of God is much discredited for the want of painful and able ministers to instruct the people in the true religion, and for want of convenient places capable to receive any assembly of people in a decent manner, for celebrating God's holy ordinances," it was ordered that a church should be built in the most convenient part of each parish capable to receive and accommodate two hundred persons. To prevent scandalous and ignorant pretenders to the ministry from intruding themselves as teachers, no minister could be admitted to officiate within the government, but such as should produce testimonials to the governor that he received ordination either from

some Protestant bishop or ministers within some part of his majesty's dominions, or the dominions of any foreign prince of the reformed religion; upon which testimonials the governor should induct the said minister into the parish that should make presentation of him. Ministers of every church must preach every Sunday, and pray for the King, Queen, Duke of York and the royal family; and marry persons after legal publication or license. No person should be molested, fined or imprisoned, for differing in judgment in matters of religion, who professed Christianity. Church-wardens must report twice a year of all profaneness, Sabbath breaking, fornication, adultery, and all such abominable sins. No person employed about the bed of any man, woman or child, as surgeon, midwife, physician or other person, should exercise or put in practice any art contrary to the known rules of the art in such ministry or occupation.

The constable should whip or punish any one, when no other officer was appointed to do it.

All sales and alienations of property must be by deed, or last will and testament.

No condemned person could be buried near the place of execution.

A woman causelessly absenting herself from her husband and refusing to return, forfeited her dower.

Every parish minister was enjoined to pray and preach on the anniversary of the deliverance from the gunpowder treason, November 5, 1605, and on January 30 "to manifest the detestation of the barbarous murder of Charles I. in 1649," and on May 29, "the birthday of Charles II. of blessed memory."

If any person committed fornication with any single woman, both should be punished, either by enjoining marriage or by corporal punishment, at the discretion of the court.

Persons guilty of perjury must stand in the pillory three several court days, and render double damages to any party injured thereby.

Apprentices and servants absenting themselves from their masters without leave, must serve double the time of such absence.

Every town must have a marking or fresh-brand for horses. No ox, cow, or such like cattle could be killed for sale or for private use without notice given thereof to the town registrar.

No person could be a common victualler, or keeper of a cook-shop or house of entertainment, without a certificate of his good behavior from the constable and two overseers of the parish; nor suffer any one to drink excessively in their houses after nine o'clock at night, under the penalty of two shillings and sixpence.

No purchase of land from the Indians should be valid without a license from the governor, and the purchaser must bring the sachem or right owner before him to confess satisfaction. No one was permitted to sell, give, or barter, directly or indirectly, any gun powder, bullet, shot, or any vessel of burden, or row-boat (canoe excepted), with any Indian, without permission of the governor, under his hand and seal; nor sell, truck, barter, give or deliver any strong liquor to an Indian, under penalty of forty shillings for one pint, and in proportion for any greater or lesser quantity; except in case of sudden extremity, and then not exceeding two drams.

At Hempstead, neither New York, Esopus, Albany, Schenectady or other Dutch towns were represented. This arrangement for the composition of the convention indicated clearly enough that the laws which Nicolls presented for adoption were intended only for the towns on Long Island and in Westchester,

where the English population was predominant. Undoubtedly the code was designed for the ultimate government of the entire province, but that it would be impossible immediately to bring all its provisions into effect among a people of such widely divergent character as the English and Dutch who together constituted the bulk of population in the colony, was recognized by the judicious and far-sighted governor. For nearly half a century the Dutch of New Netherland had lived under municipal and judicial institutions derived from their mother country, and these were decidedly different from those to which the English were habituated. The population of New Amsterdam and of the valley of the Hudson was still mostly Dutch, although there had begun an infusion of other nationalities. For the most part, few of these people were in any wise familiar with English customs; as a matter of fact, they could not even understand or converse in the English language. Therefore, it was wholly impracticable to consider at the moment any abrupt substitution of courts and legal procedure of English character in place of those which had been instituted by the Dutch. With this divided people to rule, the task before Nicolls was indeed one of tremendous difficulties. A wise reserve led him to refrain from interference with the Dutch administration which he found in efficient operation, and to permit the authorites of the Dutch towns, such as Beverwyck, Rensselaerswyck, and Esopus on the upper Hudson, and New Amsterdam and the purely Dutch communities in what afterward became Kings county, to administer their affairs and to distribute justice in their own ways.

So it was that for a considerable period the colony exhibited the anomaly of working under two legal systems, the Dutch continuing to follow the forms to which they were attached through inheritance from the fatherland, and through their own

local practices of nearly a half century. As the historian of the New York court of common pleas, James Wilton Brooks, has said, the Roman-Dutch system of law which had been brought from Netherland to America by the Dutch pioneers was "a kind of irregular mosaic"; but the same authority considers that "on the whole it was infinitely superior to the more technical and artificial system" to which the English had been accustomed, and which Governor Nicolls now started to impose upon the colony. Upon the civil side, it is doubtful if the Dutch law was much if at all improved upon by the English substitution. On the other hand, in the treatment of criminal cases the English practices were surely better, although it was long before the people of New Amsterdam, transformed into New Yorkers, became agreeably disposed to the English custom of trial by jury; they preferred and tenaciously clung to their own methods of settlement by arbitration or by the decision of judges.

Many of the Dutch practices continued to adhere with a persistency that fully demonstrated their usefulness, their righteousness. In fact, some of them were, in the course of time, permanently absorbed as a part of the English system. Nicolls carefully refrained from interfering with land ownership as much as possible, and his successors generally followed his example. Laws pertaining to property held under the Dutch land patents were permitted to stand as they were, and, in the course of time, many of these became part of the established laws of the province and the state. Primogeniture, an English custom particularly distinguished from that of Holland, made no headway with the New Yorkers, who rigidly held to the Dutch customs in respect to inheritance. Other traces of the Dutch legal and municipal systems are found in the laws of New York

of later periods. Among these are the Dutch methods of making wills by oral declaration before a notary, or by written instructions put in his keeping; the restricted rights of suffrage, which beginning with the time of Stuyvesant lasted for more than a half century and left a permanent influence; the modern district attorney, who is clearly the *schout* of the Dutch period; the practice of raising money for public purposes by excise tax, which was imposed upon the colony by the first Dutch governors; the practice of laying special assessments to provide for local improvements; and other instances showing the influence of the Dutch mind and Dutch practices, upon the subsequent law and practices of the colony and state might be cited.⁷

Strange to say, more difficulty was found in bringing the towns which had been established by the English from New England into subjection. These included towns of mixed population, such as Newtown, Flushing, Hempstead, New Utrecht, Jamaica, Westchester, Eastchester, and also the exclusively English towns in the eastern part of Long Island which had been settled under the jurisdiction of Connecticut or of the New Haven colony. The inhabitants of these towns had joined a military campaign for the subjugation of New Amsterdam when Colonel Nicolls arrived from England, but they were still insistent in retaining their connection with Connecticut for the particular reason that they were in complete sympathy with the religion and system of government of that colony.

Admirable as they were in most respects, the Duke's Laws were far from meeting the approval of the English speaking inhabitants for whom they had been especially devised. In the very beginning, criticism of them was outspoken, the principal

^{7. &}quot;History of New York in the Eighteenth Century", by Mrs. Schuyler Van Rensselaer, vol. II, p. 154.

opposition to them being based upon the ground that they had been imposed upon the people without popular consent. began another contention for popular government in the colony, although this time it was the English and not the Dutch, as had been the case under Keift and Stuyvesant, who were the complainants and agitators. The issue thus drawn had much to do with the final moulding of the province into an English commonalty. Vigorous protest was made against the action of the government in dictating these laws, and many of the delegates to Hempstead found themselves in decided disfavor with their townsmen when they returned to their homes after the close of the convention. So widely and strongly did this spirit manifest itself that the governor felt compelled to recognize it and to take action thereon. Accordingly, at the session of the court of assize in Fort James, in October, 1666, he caused a resolution to be adopted and promulgated, "that whoever thereafter shall in any way detract or speak against the deputies signing the address to His Royal Highness at the general meeting at Hempstead, should be presented to the next Court of Sessions, and if the justices see cause, they shall then be bound over to the Assizes to answer for the slander upon plaint or information."

Aside also from this unpopularity on the part of the governed, the code, as finally shaped and imposed upon the colony, was far from being adequate and satisfactory for the purpose for which it was devised. At the first sitting of the newly formed court of assizes, in October, following the convention, more than one hundred amendments were made to it, and in due course these were confirmed by the Duke of York. Other additions and alterations were made from time to time, and with these changes the colony was governed under the provisions of

the code and according to its terms until the first provincial assembly was convened by Governor Dongan in 1683.

Long Island, Staten Island and Westchester were now set apart as Yorkshire, and the district was divided into the East Riding, the West Riding, and the North Riding, after the English political manner. The East Riding included the towns of Suffolk; the West Riding included Staten Island, and Newtown and Kings county, on Long Island; the North Riding included the towns of Westchester, and all of Queens county except Newtown. The governor and council appointed William Wells of Southold, the high sheriff of Yorkshire, and in each riding a deputy sheriff and justice of the peace were named. The high sheriff and the deputies were appointed annually, but the justices continued in office at the pleasure of the governor. In 1666 the office of deputy sheriff was abolished, but that of high sheriff continued until the time of the Dongan assembly in 1683. John Underhill was appointed high constable and under sheriff of the North Riding, and he was also surveyor general; Daniel Denton, of Jamaica, John Hicks, of Hempstead, Jonas Wood, of Huntington, and James Hubbard, of Gravesend, were among the justices of the peace.

As has been already seen, aside from certain specific reservations, the royal patent gave to the Duke of York, through his agents and deputies, full and absolute power and authority to govern the inhabitants according to his own judgment. Co-relative was the power to fix all manners of orders, laws and other forms of government, and to exercise martial law when necessary. According to the provisions of this patent, the inhabitants of the province had no rights whatsoever in legislation, the entire legislative and judicial authority being vested in the Duke of York,

as proprietor, or in those whom he might appoint as his agents.

By the commission issued to Colonel Nicolls, all the powers granted in this patent were assigned to the new governor to perform and execute. This in effect was a declaration that legislation for the province should be by ordinance wholly, and not at all by statute. When the royal commissioners, Nicolls, Cartwright, and Carr, issued their proclamation from New Utrecht Bay upon their arrival in the harbor before New York, they announced that all who should submit to the government of his English majesty should have the privileges enjoyed by his majesty's English subjects. Naturally this was construed as granting to the inhabitants of the colony the right of participating in the making of the laws for their own government, a privilege already enjoyed by the people of New England, Maryland and Virginia. The difference between this announcement and the intentions of the King and the Duke, as set forth in the patent, and in the commission and instructions issued to Nicolls, became the cause of decided disagreement between the colonists and their successive governors, a disagreement which extended over nearly a quarter of a century, and was marked by animated and often acrimonious discussion until finally the colonists succeeded in winning the right of home legislation.

In October, 1669, during the administration of Lovelace, the English towns of Hempstead, Jamaica, Oyster Bay, Flushing, Newtown, Gravesend, Westchester and Eastchester, petitioned for redress of grievances, and asked for an assembly of delegates to advise about and approve laws "with ye Governor and his Council as may be for ye good and benefit of ye common wealth." In their petition they laid particular emphasis upon the fact that the people were still excluded from any participation

in legislation, the right to which they asserted had been promised them by the terms of the commissioners' proclamation. answer, they were told that "it doth not appear that Col. Nicolls made any such promise," and, moreover, the governor's instructions forbade his making any alterations in "ye Lawes of ye government settled before his arrival." This continued ignoring of the terms of the proclamation, as it seemed to the protestants, bore less heavily upon the non-English inhabitants than it did upon those of English origin. By the articles of capitulation it was expressly agreed that the Dutch should enjoy their own customs, and that their municipal affairs and legal methods should continue as before. It does not appear that these stipulations were ever disregarded or violated, and in these particulars the statu quo practically continued until the final ceding of the province by Holland to England under the treaty of Westminster, in February, 1674.

Thus fully established in the control of the territory of his royal master, and with a new English code of laws set up, Governor Nicolls was now prepared to go further in measures for the complete reversion of the colony from Dutch to English rule. Nevertheless he moved slowly, and, as the result ultimately demonstrated, he acted with a very wise and judicial discrimination. At all times he exercised his authority with such rare good judgment that the transformation of the Dutch into English communities was so gradual and so smooth that it was scarcely noticeable. No opportunity was neglected to show the inhabitants of the city and colony that the conquest was a peaceable one. His whole aim seemed to be to make the necessary changes in the government with the least possible friction with the old colonists, and in such a way that they should all, Hol-

landers and Englishmen alike, be favorably disposed to the new control.

It was not until June of the following year, 1665, that he took the first step distinctly to alter the form of the municipal government of New York. By a proclamation dated the twelfth of that month he announced that the time had arrived when he considered it necessary to "revoke and discharge the fforms and Ceremony of Government of this his Majesties towne of New Yorke under the name or names, style or styles of Schout, Burgomasters & schepens." Therefore he discharged these officials and then ordained that

"For the future administracon of Justice by the Lawes established in these the Territoryes of his Royall Highnesse wherein the welfare of all the inhabitants and the Preservacon of all their due Rights and Privileges Granted by the Articles of this towne upon surrender under his Majesties Obedience are concluded; & do further declare That by a particular Commission, such persons shall be authorized to putt the lawes in Execucon, in whose abilityes, prudence & good affection to his Majesties Service and ye Peace and happiness of this Government I have especial reason to put Confidence, which persons so constituted and appointed, shall bee knowne and called by the Name & Style of Mayor Alderman and Sheriffe, according to the Custome of England in other his Majesties Corporacons."

On the same day he issued an ordinance

"That the inhabitants upon Manhattan Island are and shall be forever counted, nominated and Established as one Body Politique & Corporate under the Governm^t of the Mayor, Alderman and Sheriffe."

Thomas Willett was appointed to be mayor; Thomas Delavall, Oloff Stevensen Van Cortlandt, Johannes Van Brugh, Cornelis Van Ruyven and John Lawrence (or Laurens) were named

^{8. &}quot;Documentary History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. I, p. 389. "The Colonial Laws of New York", vol. I, p. 100.

as aldermen; and Allard Anthony, who had been the *schout* in the last years of Stuyvesant's rule, was appointed sheriff.⁹ To the mayor and aldermen, or any four of them, full power and authority were given to rule and govern "according to the general laws of the government and such peculiar laws as are or shall be found convenient and necessary for the good and welfare of the corporation"; and they also had power to appoint officers for the orderly execution of justice.

On June 15, three days after receiving this commission, the mayor and aldermen met at the Stadt Huys and organized a court. This became the celebrated mayor's court of New York city, which continued under that name for one hundred and fiftysix years, when its jurisdictions were transferred to other tribunals. The mayor's court constituted the court of sessions for the city in the same manner as the justices of the peace of the country towns constituted the sessions courts of the counties. At their first meeting the members of the mayor's court chose as their secretary Johannes Nevius, who was the former secretary of the court of burgomasters and schepens. On June 27 the court held its first meeting for the hearing and trial of cases. It was directed that the records should be kept in English and Dutch, and thus without break the judicial administration of the affairs of the community went on as before, the difference in name being almost the only perceptible change.

After Governor Nicolls had succeeded in establishing himself fully in the colony and in adjusting affairs as he had been directed by his instructions, he made a report of the condition of affairs of New York, answering several queries which had been addressed to him by the lords of plantations concerning the condition of affairs in the territories under his control. Two

^{9. &}quot;Records of New Amsterdam," vol. V, pp. 248-252.

paragraphs in this document treat of the courts and legal methods. They are as follows:¹⁰

"Ist. The Governour and Councell with the High Sheriffe & the Justices of the Peace in the Court of the General Assizes have the supreme Power of making, altering and abolishing any Laws in this Government. The County Sessions are held by Justices upon the Bench, Particular Town Courts by a Constable and Eight Overseers, The City Court of N. Yorke by a Mayor and Aldermen. All causes tried by Juries.

"7. All causes are tried by Juries, no Lawes contrary to the Lawes of England. Souldyers only are tryable by a Court Marshall, and none others except in cases of sudden invasion, mutiny or Rebellion, as his Matter Lieutenants in any of his Countries of England mya or ought to

exercise."

One impotrant innovation, and only one, was made in the practice as it had existed before; that was the introduction of trial by jury, which was proposed at the first meeting of the mayor's court of New Amsterdam, and was probably brought about by the influence exercised by Mayor Thomas Willett, with his particular knowledge of English legal usages. A jury of twelve was empannelled to try civil causes, and it was voted that trials by jury should be on the first Tuesday of every month. Jury trial, however, did not prove popular with the Dutch, most litigants preferring to have their causes disposed of by judges as had been done before, and years elapsed before it was fully accepted by them. It was sooner and more generally adopted by the English.¹¹ The first case of trial by jury in this court was on June 27, 1665, being the suit of Francis Doughty against John Hinxman and Kenelm Winslow; this was an action and counter action for settlement of an account. The record of the case is as follows:

^{10. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 188.

11. "Records of New Amsterdam," vol. V.

"ffrancis Douthy, pltf. vs. John Hinxman and Knollum Winslow, defts. The Court doth Order that the Partyes shall deliver in their Evidence to the following Juries to witt Caleb Burton, Isaacq Bedloe, Christ. hoogland, Balthw de Haery, Wm dornel, James Bullaine, John Gurland, John Browne, Charles Bridges, John damrel, Thos. Carvet, Saml Edsal.

"The Juries doe Judge that the defenders shal pay the plaintiv Soo much as he shall appeare by true accounts due unto him from the S^d defenders, besides the Costs^d Judgment & Nominates for the view Examine and make up the accounts betwixt the partyes from the tyme that the Bark was Sould to Mr Tacher, til the tyme that she was Returned againe to the s^d Douthy to witt Mr Jacob Backer, Mr Isaacq Bedloe, Mr Balthazar de haert & Mr Samuel Edsal Ady ut Supra.

"Knellum Winslow, pltf. vs. ffrancis Douty, deft. The Court does order the Parties to deliver their Evidence to the before standing juries. The juries doe judge that the defendrs shall pay besides the damages of the Court to the Plaintive the Somme of five and twenty guilders Wampum. The honnble Court doe give their Assent to the foresd Judgement Adt ut Supra.

"John Hinxman, pltf. vs. ffrancis Douty deft. With Consent of both Partyes the Court does Order that they shal deliver their evidence to the jury. The juries judgment is, that the deft. shall pay to the pltff. Soo much as is due to him by Bond besides the Cost & damages of the Court. The Honnourable Court doe give their assent to the aforesaid judgement. Adv ut Supra.

"ffrancis Douty, pltf. vs. Knellum Winslow, deft. In Action of Assalt & Batterie the wh The Court orders that the parties shall deliver in their Evidence to the foresaid Juries. The Juries doe allowe to the Plaintive for his fine thirty pence besides the damages of the Court. The Honble Court doe give their Assent to the abovesaid allowence. Ady ut Supra."

On the same court day there was another case in which Kenelm Winslow was the plaintiff. The matter in litigation does not appear, but the case was disposed of by reference to the jury, as those preceding it had been:

"Knellum Winslow, plt. vs. Samuel Moore, defft. The Court orders that one either syde shall deliver in their evidence to the aforenamed Juries. The Juries doe allowe the plt. the Costs & damages off the Court & no Moore. The Honnble Court doe give their assent to the aforesd Judgement and Allowance off the Juries.

During the four years that Governor Nicolls remained in

New York, he accomplished a work far in advance of anything that had ever been achieved by any of his predecessors, placed the colony upon a sound foundation, and advanced it far along the road to its future greatness. He proved himself to be a remarkable man of affairs, farsighted and statesmanlike, tactful and generous in his dealings with the people over whom he had been placed, but at the same time unswerving, and determined in whatsoever he believed to be for the best interests of the community. His praises have been sounded by every historian of New York. What has been said of him by one writer substantially voices the judgment of all students of this period of New York history:

"In New York his, tact, his good temper, and his impartiality, had never failed. Many old matters, Van Ruyven wrote to Stuyvesant in Holland, had been 'ripped up and misinterpreted' but the governor 'wisely disregarded them.' He well knew, as he wrote to his commissaries in Albany when urging them so to behave that Dutch and English might 'live as brothers', that to pay heed to 'strange news' and gossip 'commonly tends to the dividing of men's minds.' With his soldiers he was so strict that they provoked only one small riot on Manhattan. When the Dutchmen at Esopus broke into open revolt, exasperated by the behavior of the garrison and the harshness of Captain Brodhead, who failed to follow the governor's good advice, Nicolls did indeed banish the ringleaders, but he also suspended Brodhead. His sympathy with the Dutch and his confidence in their good intentions he showed in acts as well as in words, notably in many appointments to office, including the appointment of Van Ruyven to the responsible post of collector of customs as Delavall's successor. He did what he said he wanted to do-he won the affections of the people confided in such difficult circumstances to his care; yet in accomplishing this he shirked no responsibility, shunned nothing that his duty to the Duke or his own estimate of the needs of the province demanded, and ventured to break promises that had been given before he fully understood either local conditions or his master's desires. In all phases of his complicated work he stood virtually alone, with few to advise him, none to share responsibility with him. Nevertheless, his correspondence shows that he quickly learned to comprehend colonial problems even in their broader aspects, except only the supreme importance of the friendship of the Iroquois. In his

official as in his private capacity, this first English governor of the Dutch province seems to have been a man in ten thousand. Certainly among those who followed him in office, only three or four deserved to be compared with him for ability, diligence, or integrity; scarcely one showed so kindly a feeling for the people he governed; and not one continued, as did Colonel Nicolls, to bear their interests in mind and to labor for their good after he left their shores."

Nicolls had not found the position of governor wholly congenial. Although he had managed so discreetly that the people were most agreeably disposed toward him, he was nevertheless well pleased when, after the signing of the treaty of Breda by which Holland released to England all claim upon New Netherland, it was possible for him to claim release from his responsibilities. His recall was accompanied with kind and flattering words from the king and the king's ministers, and he could leave New York with the satisfaction of knowing that he had succeeded in firmly establishing English institutions, and in providing for the permanency of English rule in this part of the western continent.

As his successor, Colonel Francis Lovelace, of the family of Lord Lovelace in Berkshire, was appointed, and reached New York before midsummer in 1668. Nicolls remained some time to aid Lovelace in his new duties, and when he finally left the colony which he had transferred into an English body politic, he carried with him the general good will of the citizens, who parted from him with expressions of respect and regret.

Colonel Lovelace brought to New York a confirmation by the Duke of York of the code of laws that had been promulgated at Hempstead; among other things, the instructions required him "to make no alterations in the laws of the gover-

^{12. &}quot;History of the City of New York In the Seventeenth Century", by Mrs. Schuyler Van Rensselaer, vol. II, p. 64.

nor settled before his arrival." With him came his two younger brothers, Thomas Lovelace and Dudley Lovelace. His administration of five years was in no way remarkable. He was not in any respect as strong an administrator as his predecessor, nor indeed did he have to undertake the primary work of foundation and construction, for that had already been done. Of a mild and easy-going disposition, he simply followed in the way which Nicolls had pointed out, and, working along those lines, he was able to accomplish much good in improving the general condition of the province and the city. In the beginning his council consisted of four members, including Matthias Nicolls, the provincial secretary, Cornelis Steenwyck, mayor of the city of New York, and Thomas Willett, who was the first mayor of the same city in 1665. Other members of his council at different times were Thomas Delavall, Ralph Whitfield, Isaac Bedloe, Francis Boone, Cornelis Van Ruyven, Captain John Manning, Dudley Lovelace, and Thomas Lovelace.

Few of the public acts of Lovelace were historically important, although matters troublesome to himself occasionally came up. The only really conspicuous act of his administration was the opening of the highway between New York and Harlem as part of a post road for securing better communication between New York and Boston. He also purchased from the Indians, in 1670, Staten Island, thus accomplishing the removal of the aborigines further away from the metropolis. Court proceedings continued as they had gone on in the preceding years, without much change. The organization of the courts was not interfered with, and the administration of law, as may be seen by the records, presented the now familiar aspects, which had long characterized it. Regular practitioners of law had come by this time, but, as before, most of the

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business of the courts was in civil affairs, few criminal cases coming before them. There was a city hangman, but it is not clear that he had much to do. His name and his memory have been preserved in a letter which was written by Jo. Clarke, "Ffrom ye Secretary's Office in ffort James the 28th day of January in the evening 1672-3". This letter was directed "to Capth Silvester Salisbury Governor of Fort Albany." It was written in answer to a letter of January 11 sending instructions in regard to the method of trying murderers of soldiers, and gives an account of many things that were happening in Fort James at that time. The paragraph in which the hangman is mentioned read:

"Lastly for our own City News, lett this satisfy; that t'other day wee had like to have lost our Hangman Ben Johnson, for hee being taken in divers Thefts and Robberyes, convicted & found guilty scap^d his neck through want of another Hangman to truss him up, soe that all the punishment hee receiv^d for his 3 yeares Roguery in thieving stealing (which was never found out till now) was only thirty-nine stripes at the Whipping-Post, loss of an ear and Banishmt.¹⁸

One case of capital punishment is found in the records. On September 13, 1666, a Dutchwoman, Engeltie Hendricks, was brought before the court on a charge of infanticide.

"for which abominable act the sd Engel Hendrick merited to be Punished others to an Exampel. Noo Soo it is that We the Ald'men of New York by vertue of a Commission doeing Justice in the name of his Magesty the King of England, Schotland, france and Ireland & his Royal Highness the Duke of York &ca & their Govern the Right Honnble Collonel Richard Nicolls doe Condemme the sd Engel Hendricx as we doe by these Presents that she shal be brought from this Place to the Whipping post and then & there to Receive twentie Slashes with Rods and then to Remaine in Prison the time of 24 houres and to be brought out the Townes Gate."

^{13. &}quot;The Historical Magazine," 1st series, February, 1860, vol. IV, p. 50.

Pending execution, the woman escaped from jail, but was afterward apprehended and hanged. In the records of the court, July 26, 1669, there is a report of the "Examination of Wm fisher whether he had any conversation with Engel Hendrix who is lately put to death for murdering her Child." A negro who was involved in the woman's escape was apprehended and sentenced to serve as public executioner for a period of five years, or to pay a fine.

Governor Lovelace's term of service came to an abrupt end in August, 1673, when the Dutch fleet of men-of-war commanded by Admirals Evertsen and Binckes appeared in the harbor before New Amsterdam. Lovelace was in Connecticut, and before he could get back to New York the city had surrendered to the invaders. Steps were promptly taken by the admirals to follow up their easy victory by reinstating a Dutch government. city of New York was named New Orange, and the fort Willem Hendrick. Albany was christened Willemstadt, and its fort became Fort Nassau. Authority was exercised by a council of war consisting of the two admirals, Captain Anthony Colve, and two other captains, Nicholaes Boes, and A. F. Van Zeyll. A body of delegates, Cornelis Steenwyck, Cornelis Van Ruyven, Johannes De Peyster, Johannes Van Brugh, Martin Krieger and Nicholas Bayard, were sent to confer with the council of war at the fleet on behalf of the commonalty. To these delegates direction was given "To convoke the commonalty here in the City Hall as soon as possible, and to cause them to nominate six persons as burgomasters and fifteen as schepens to wit from the wealthiest inhabitants and those only who are of the Reformed Christian Religion, from whom the said Commanders and Council of War will elect some as Magistrates of this City. This

^{15. &}quot;Records of New Amsterdam", vol. I, p. 188.

was on August 12, and four days later the following were nominated for burgomasters: Cornelis Steenwyck, Cornelis Ruyven, Johannes Van Brugh, Martin Krieger, Egedius Luyck, Johannes De Peyster, and Nicholas Bayard. The council of war selected from these nominees: Johannes Van Brugh, Egedius Luyck and Johannes De Peyster, to be burgomasters under the new gov-The citizens nominated as schepens: Jeronimus Ebbingh, Willem Beeckman, Balthazzar Bayard, Steven Van Cortlandt, Rynier Williamsen, Jan Vinge, Conraet Ten Eyck, Jacob Kip, Gelyn Verplanck, Louwerens Van der Spiegel, Francois Rombouts, Adolf Peitersen, Peter Jacobsen, and Peter Stantenburgh. From this list of nominees the council of war selected the following: Jeronimus Ebbingh, Willem Beeckman, Jacob Kip, Gelyn Verplanck and Louwerens Van Der Spiegel. Antony de Milt was chosen to be schout.16 With this done, and oaths of allegiance administered, the transformation of New York to its former Dutch status was fully accomplished.

The five Dutch towns of Long Island, Midwout, Bruekelen, Amersfort, Utrecht, Boswick, and also Gravesend and Staten Island, formally submitted to the authority of the Dutch admirals. Jacob Strycker, of Bruekelen, was appointed to be schout of these towns, and Francis de Bruyn was made secretary, while for each town four schepens were named, upon nomination by the citzens. For Staten Island, Pieter Biljou was appointed schout, and two schepens were named. The five English towns at the western end of Long Island, Flushing, Jamaica, Middleburg, Oyster Bay and Hempstead, yielded to the Dutch, and for each of these three schepens were appointed, while William

^{16. &}quot;Documentary History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. I, p. 390. "History of the State of New York," by J. R. Brodhead, vol. VI, p. 226; "Records of New Amsterdam," vol. VI, p. 397.

Lawrence was made schout and Carel Van Brugg was appointed secretary. The five towns of the East Riding, Southampton, Easthampton, Southold, Seatucket, and Huntington were slower in acknowledging allegiance to the new comers. More even than in the time of Nicolls did they desire to ally themselves to the Connecticut colony, with which they had never ceased to have intimate relations, and to whom in the present emergency they turned longing eyes. Finally, however, they fell in with the rest of Long Island, and two schepens were appointed for each of the five towns, with Isaac Arnold as schout and Henry Pierson secretary. Schepens were also appointed for the towns of New Jersey, which came under the jurisdiction of Governor Colve, and new courts of justice were established in that territory, as well as in Delaware.

Naturally, the Dutch towns on the Hudson and in the interior did not at all hesitate in accepting the changed conditions of authority in the colony. For Schenectady, Jan Gerritse Van Mark was appointed schout, and schepens were appointed for Swaenenburg, Hurley and Marbletown. For the town of Esopus, Isaac Graevenraet was appointed schout, and William Montagne secretary. For Willemstadt and Rensselaerswyck, Andrew Drayer, who was commander of Fort Nassau, was appointed schout, and Johannes Provoost secretary of the court. Four schepens were appointed for Willemstadt and three for Rensselaerswyck; the schepens of Willemstadt were Gerrit Van Slechtenhorst. Davis Schuyler, Cornelis Van Dyck, and Peter Bazardes.¹⁷

Their work accomplished, the Dutch admirals, Evertsen and Binckes, sailed for Holland on September 27, 1673, but they left their associate, Captain Colve, to be the governor general of the recovered province. In place of Matthias Nicols, Nicholas

^{17. &}quot;New Netherland Register," p. 71.

Bayard had been appointed secretary of New Orange and register of New Netherland. Cornelius Steenwyck was appointed councillor, "to assist in the direction of all cases relative to justice and police, and further in all such military concerns both by water and by land, in which the governor shall deem proper to ask his advice and assistance to administer justice both in civil and criminal cases."¹⁸

Captain Willem Knyffe was the schout fiscal and public prosecutor,

"to take care that the sovereign jurisdiction and domain of their High Mightinesses and his Serene Highness over this Province be duly maintained without suffering anything to be directly or indirectly attempted to the prejudice or injury thereof; also to apprehend and prosecute all malefactors, whether criminal, political or military who have committed anything against the Province or its supreme magistracy; likewise to pay particular attention that all scandals, irregularities, and ungodliness be driven from the Province; moreover that good laws and justice be administrated without respect of persons and in all courts of justice within this province, according to the laudable customs, laws and ordinances of our Fatherland, stern to execute all placards and ordinances, also all sentences and judgments of the supreme magistracy, according to their tenor and to prosecute all law breakers as they deserve."

Cornelis Van Ruyven was soon added to the council, which as thus constituted was the superior court of the province. The city magistrates were also consulted when affairs of importance came up. Administration of law in the towns was intrusted primarily to district courts similar to the English courts of session. Two courts on the Island of Manhattan, one in the Bowery village just north of the city proper on the east side and the other in Harlem, were subordinate to the city court.

^{18. &}quot;Documents Relative to the Colonial History of New York," vol. II, p. 611.

^{19. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. II, p. 669.

Instructions issued by the governor to the schouts and magistrates of towns outside of New Orange, bearing date of October 1, 1673, show the jurisdiction and powers of the local tribunals. It was directed that in all cases relating to police, security and peace of the inhabitants, also to justice between man and man, should be finally determined by the magistrates, to the amount of and under sixty florins, beavers, without appeal. If the sum was in excess of that amount, the aggrieved party might appeal to a meeting of the schout and councillors delegated from the villages subject to the jurisdiction of the schout. For this purpose one person was to be annually appointed from each village; and all were directed to assemble in a convenient place to be selected by them, and power was given to them to pronounce final judgment to the amount of two hundred and fifty florins, beavers. But in all cases exceeding that sum, either party should be entitled to an appeal to the governor general and council. It was ordered that in case of an inequality of votes the minority should submit to the majority; but those who were of a contrary opinion should have that opinion recorded in the minutes, but should not divulge it without the meeting under pain of arbitrary correction. All criminal offences were to be referred to the governor general and council, but smaller offences, such as quarrels, abusive words, threats, fisticuffs and such like, were left to the jurisdiction of the magistrates of each particular village. The magistrates were also empowerd to make ordinances for the government of their districts, relating to petty offences, provided they were conformable to the law of the Fatherland, the same to be first approved by the governor general and council.

Governor Colve's control was essentially of military character. The circumstances under which he came into possession

of the colony were such that it became necessary for him to exert his authority strongly, and to enforce military provisions against possible reprisal by the English whom he had deposed. became therefore somewhat unpopular, but it would appear that he conducted himself as discreetly as could be expected under the circumstances. Aside from the setting aside of the English courts and English legal practices, and substituting for them the former Dutch methods and the former Dutch officials, his rule made but little impression upon the judicial history of the colony. His provisional instructions for the schout, burgomasters and schepens of the city of New Orange was about as far as he went in relation to legal matters. This ordinance, which was issued on January 15, 1674, has been generally known as the Colve Charter, although it was in no sense a city charter; it defined the duties of the magistrates, and the functions of their court. It embraced some new features relating to local government, particularly in giving increased power in criminal cases to the board of burgomasters and schepens, and in providing that the schout fiscal should preside at the meetings of the board in the absence of the governor, instead of permitting the burgomasters and schepens to elect one of their own number for presiding officer. This charter or ordinance is as follows:

"1st. The Schout and Magistrates, each in his quality shall take care that the Reformed Christian Religion conformable to the Synod of Drodrecht shall be maintained, without suffering other Sects attempting anything contrary thereto.

[&]quot;2. The Schout shall be present at all meetings and preside there unless the Honble. Heer Governour or some person appointed by him be present who then shall preside, when the Schout shall rank next below the youngest acting Burgomaster. But whensoever the Schout acts as Prosecutor on behalf of Justice or otherwise, having made his complaint, he shall then rise up and absent himself from the Bench during the deciding of the case.

- "3. All matters appertaining to the Police, Security, and Peace of the Inhabitants, also to Justice between man and man, shall be determined by final Judgment by the Schout, Burgomasters and Schepens aforesaid to the amount of Fifty Beavers and under, but in all cases exceeding that sum, each one shall be at liberty to appeal to the Heer Governour, & Council here.
- "4. All Criminal offences which shall be committed within this City and Jurisdiction thereof shall be amenable to the Judicature of said Schout, Burgomasters and Schopens who shall have power to judge and sentence the same even unto Death inclusive; provided and on condition, that no sentence of corporal punishment shall be executed unless the approval of the Heer Governour General and Council shall be first sought and obtained therefor.
- "5. The Court shall be convoked by the President Burgomaster, who shall, the night before, make the same known to Capt. Willem Knyff (who is hereby provisionally qualified and authorized to be present and preside over the Court in the name and on the behalf of the Hr Governour), and so forth to the remaining Schout, Burgomasters and Schepens.
- "6. All motions shall be put by the first Burgomaster, whose proposition being made and submitted for consideration, the Commissioner there presiding in the name of the Hr Governour, shall first vote there, and so afterwards the remaining Magistrates each according to his rank; and the votes being collected, it shall then be concluded according to plurality; but if it happen that the votes are equal, the President shall then have power to decide by his vote, in which case those of the contrary opinion as well as those of the minority may Register their opinions on the Minutes, but not publish the same in any manner out of the Court on pain of arbitrary Correction.
- "7. The Burgomasters shall change Rank every year, wherein the eldest shall first occupy the place of President and the next shall follow him; but during this current Year the change shall take place every 4 months, since three *Burgomasters* are appointed for this year.
- "8. The Schout, Burgomaster and Schepens shall hold their Session and Court Meetings as often as the same shall be necessary, on condition of previously appointing regular days therefor.
- "9. The Schout, Burgomasters and Schepens shall have power to enact, and with the approbation of the Hr Governour to publish and affix some Statutes, Ordinances and Placards for the Peace, Quiet and Advantage of this City and the inhabitants thereof within their district, provided that the same do not in any wise conflict, but agree as much as possible, with the Laws and Statutes of our Fatherland.
- "10. Said Schout, Burgomasters and Schepens shall be bound rigidly to observe and cause to be observed the Placards and Ordinances of the

Chief Magistracy, and not to suffer any thing to be done contrary thereto, but proceed against the Contraveners according to the tenor thereof; and further promptly execute such orders as the Heer Governour General shall send them from time to time.

"II. The Schout, Burgomasters & Schepens shall be also bound to acknowledge their High Mightinesses the Lords, States General of the United Netherlands and His Serene Highness the Lord Prince of Orange as their Sovereign Rulers, and to maintain their High Jurisdiction, Right and Domain in this Country.

"12. The election of all inferior officers and servants in the employ of said *Schout*, *Burgomasters* and *Schopens* shall, with the sole exception of the Secretary, be made and confirmed by themselves.

"I3. The Schout shall execute all judgments of the Burgomasters and Schepens, without relaxing any, unless with the advice of the Court, also take good care that the jurisdiction under his authority shall be cleansed of all Vagabonds, Whorehouses, Gambling houses and such impurities.

"14. The Schout shall receive all fines imposed during his time, providing they do not exceed yearly the sum of Twelve hundred Guilders Seawant value, which having received he shall enjoy the just half of all the other fines, on condition that he presume neither directly or indirectly to compound with any criminals, but leave them to the judgment of the Magistrates.

"15. The Schout, Burgomasters, and Schepens aforesaid shall convoke an assembly on the 11th day of the month of August, being eight days before the election of new Magistrates, and in the presence of the Commissioners to be qualified for that purpose by the Honble Govern General, nominate a double number of the best qualified honorable and wealthy persons and only such as are of the Reformed Christian Religion, or at least well affected toward it, as Schout, Burgomasters and Schepens aforesaid, which nomination shall be handed and presented folded & sealed, on the same day, to his Honor: from which nomination the Election shall then be made by his Honor on the 7th day of the Month of August, with continuation of some of the old Magistrates, in case his Honor shall deem the same necessary."

Colve's administration had a short life. He had scarcely succeeded in establishing his government and in laying plans for the holding of it against possible attacks by the English, and in restoring some of the Dutch practices which had lapsed during the English occupation, when his rule came to an end. Across the Atlantic, only a month after he had promulgated his

"charter" for New Orange, the treaty of Westminster between Holland and England was agreed upon; by this treaty New Orange was granted to England, and the Dutch occupation of Manhattan terminated. In October, 1674, a Dutch frigate came giving Colve official information of the ceding of the province to England, and also instructions in regard to surrendering. In November, Major Edmund Andros, the new English governor, arrived and the formalities of evacuation of the city by the Dutch was arranged. All was accomplished by the tenth of November, and the end of the Dutch rule of the province of New Netherland was recorded in the court records of New Amsterdam as follows:

"On the ¹⁰/₁ November A^o 1674, the Province of N. Netherland is surrendered by Governo^r Colve to Governo^r Edmund Andros in behalf of his Majesty of Great Britain."²⁰

While the English had thus finally come into complete and undisputed possession of this territory, the question of the judicial status of New York under its changed control was raised almost at once, and continued unsettled until long after the colony had ceased to be an appendage of the British crown. For generations the subject has been discussed by historical and legal authorities; in case after case it was brought before the courts, and it has been one of the most vexatious subjects which lawyers and judges have been called upon to consider. It has long been practically settled that, whether the English had right to the territory by prior ownership, or acquired that right by the two successive treaties of Breda in 1667 and Westminster in 1674, or fixed a judicial status by the terms of the Dutch surrender,

^{20. &}quot;Records of New Amsterdam," vol. VII, p. 139.

the question has no conclusive value in the determination of legal rights. Nevertheless the subject is an impotrant part of the history of the jurisprudence of New York state.

To know what the original common law of New York was and to trace its development, it is necessary to consider what changes have taken place in its sovereignty, and to ascertain whether at a particular time the seat of the sovereignty of New York was in London, or at the Hague. The ultimate sovereignty of this territory had been claimed by Great Britain, France, and by the United Provinces of the Netherlands. The French king founded his title to northern New York on the fact that his subjects had, first of Europeans, ascended the St. Lawrence and its tributaries, including Lake Champlain, and had explored and occupied their shores. In like manner the Netherlands claimed all the country lying between the Connecticut and Delaware rivers and the lands drained by them, upon the alleged fact of their having been the first of Europeans to ascend these rivers, and others intermediate from the sea, and to explore and settle their shores. On the other hand, the English king's title was based on the fact of Cabot's discovery of the continent in 1497, under the commission of Henry VII., followed, in due time, by actual occupation at different points on the seacoast by English subjects, under crown grants, prior in point of time to any occupation of contiguous territory by the Dutch, who were consequently regarded as mere interlopers, trespassers and squatters by the English of New England and of Virginia, between whom they had settled. The English government had protested to the government at the Hague against this invasion of English territory from time to time, both under the monarchy and the commonwealth, ever since the year 1614, but no decisive steps had

been taken in the matter until 1664, shortly after the restoration of the monarchy.

Records of our courts, both of the province and of the state, abound with cases calling for the judicial determination of property rights of great value, not only in highways, in rivers and streams, but also in inheritances, which were supposed to depend upon whether the Dutch government was ever vested with the territorial sovereignty of this state, as against England, and, therefore, whether the laws and ordinances of that government, promulgated here during its forty-years of occupation, ever had any force and validity as law, and so surviving the English occupation of 1664, are still of controlling effect in determining such rights. In main, the contentions in these cases have been attempts to establish what was the original common law of New York,—the common law, and applicable statues, of England, existing in England at the time of the occupation in 1664, or something more or different. If the reduction of the Dutch was a conquest, and England took "title by conquest," as understood by the law of nations, which is a part of Anglo-American common law, the change of sovereigns from Dutch to English did not, ipso facto, change the system of law thereafter established, or affect the existing property rights or incidents of tenure, but the same remained after the conquest, and inured to the benefit of every successor in interest of the original Dutch grantee, unless expressly abrogated by the conqueror. On the other hand, if the English military expedition which compelled the surrender of the Dutch province and the submission of its inhabitants to the sovereignty of Great Britain, did not effect "a conquest," but, at most, was a forcible entry upon her own territory, in vindication of her own anterior title and sovereignty, as well founded as her title and sovereignty to Massachusetts or Virginia, then

the Dutch law, ordinances and customs, never had any validity as law, and ceased, instanter, on the entry of the English. So, too, if the king's original right of pre-emption in the soil be conceded, his deed of conveyance, before actual entry, was good in law, and the Duke acquired a perfect title.

As to the effect of the English occupation, ipso facto to displace Dutch law existing, by introducing English law, it is to be borne in mind that up to this time all of England's colonies originated in immigration, and it was only in the subsequent conquering and annexing of French, Spanish, Portuguese and Dutch colonies, that the existing laws of the conquered colonies were left intact. In the case of New York, the law, except as the articles of surrender expressly allowed it to survive in certain particulars, was never recognized by any English or provincial court, or by crown lawyers, as having any operation here, as law, after the surrender, or as governing any of the incidents of land tenure acquired in the province before that date. Ever since then, both before and after the revolution, the courts of this state appear to have ignored the fact of the Dutch occupation, or, when called upon to consider the legal consequence of that occupation upon our jurisprudence, have hopelessly divided on the question, whether New York was to be considered, in law, as acquired by conquest, or on the other hand, was like Massachusetts or Virginia, an English possession by original right, into which the common law and statutes of the realm then in force, so far as they were applicable to the condition of the province, followed the surrender as certainly as they followed the first settlement of the other English colonies to the east and south of it. The difference between a conquered or ceded territory, and a plantation made by immigration and settlement, on a previously uninhabited territory, or only inhabited by aborigines, is an

important factor in determining the question in English jurisprudence, of what law governs the one or the other.²¹

The question of the validity of the grants of vast tracts of land on both sides of Lake Champlain, made by the French provincial government at Quebec, provoked vehement discussion in the New York Assembly in 1773, when it published a vindication of the British title, as founded on "original right" by virtue of Cabot's discovery, and not by conquest. The question was argued before Kent, Ch. J., in Jackson ex dem Winthrop vs. Ingraham, 4 Johns. 163, but the judgment proceeded on other grounds. Another important case in which this question came up was the Canal Appraisers of the State of New York vs. The People on the relation of George Tibbits, which was argued and decided in the court for the correction of error, (17 Wend. 571). Chancellor Walworth in his opinion said:

"Until the former argument of this cause I had not supposed that any one seriously contended that the Roman-Dutch law which was brought here by the original settlers from Holland, in 1614, remained a part of the law of the colony after the capitulation of Governor Stuyvesant. I also supposed it was generally conceded that the province of New York was claimed by the English by right of discovery, and not by right of conquest; and therefore, that when it was taken possession of as an English colony under the Duke of York, in 1664, no formal act was necessary to substitute the common law of England in the place of that law by which the Dutch settlers had previously been governed. In a colony acquired by discovery or occupancy merely, and not by conquest or cession, the discoverers and

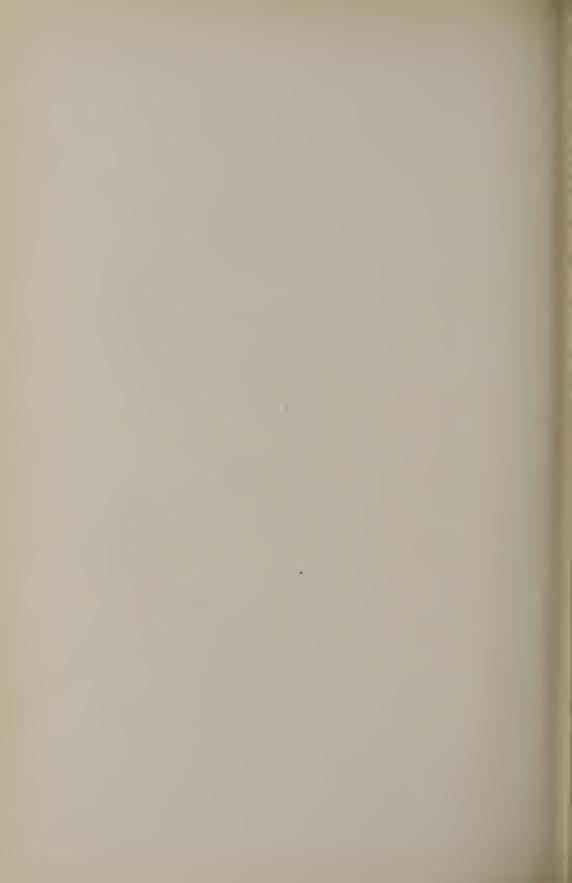
^{21.} For an extended treatment of this subject see the chapter "English Colonial Polity and Judicial Administration, 1664-1776", by Amasa A. Redfield, in "History of the Bench and Bar" of New York, vol. I, p. 35. Robert Ludlow Fowler, has also elucidated this question, and has given an account of its progress through our courts, in a series of articles on the "Organization of the Supreme Court", vol. XIX, of the Albany Law Journal. His "History of Real Property in New York," his introduction to the Grolier Club's publication of "Bradford's Laws", and his chapters on the "Constitutional History of the State," contributed to the "Memorial History of New York," are also of first importance to an intelligent understanding of our juridical history.

new occupants thereof carry with them all the general laws of the mother country which are adapted to their new situation as colonists."

The chancellor further insisted that even if the province be considered acquired by the English by conquest, there was sufficient to show an intention on the part of the conquerors to abrogate the Dutch laws and substitute those of England in their place. Lord Mansfield, in Campbell vs. Hall, decided in King's Bench in 1774, and reported in I Cowper, 204, held the same opinion on this point. Among other cases the question was argued by the counsel in briefs in Jackson vs. Gilchrist, 15 Johnson's Report 89, and in brief or in opinion the subject appears in Canal Commissioners vs. The People ex rel. Tibbits, 5 Wendell 423 (1850) and Bogardus vs. Trinity Church, 4 Paige Ch. 178 (1833).

CHAPTER V

ENGLISH AUTHORITY FULLY ESTABLISHED



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ENGLISH AUTHORITY FULLY ESTABLISHED

1683-1699

THE DUKE OF YORK ACCEDES TO THE POPULAR DEMANDS—GOVERNOR DONGAN SUMMONS THE FIRST COLONIAL ASSEMBLY IN 1683—THE "CHARTER OF LIBERTIES" PASSED—A JUDICIAL SYSTEM SET UPON A STATUTORY BASIS—THE ACT TO SETTLE COURTS OF JUSTICE—FOUR KINDS OF TRIBUNALS ARE CREATED—THE ASSEMBLY OF 1691 RE-ESTABLISHES THE JUDICIAL SYSTEM AND ENLARGES IT—EIGHT TRIBUNALS ARE PROVIDED FOR—ORGANIZATION OF THE COURTS.

Signing the treaty of Westminster in 1674, Holland surrendered to England all its possessions in the New World, and Governor Anthony Colve was directed by the States General to give over New Netherland to the representative of the English King. By this treaty, whatever questions of ownership may have before existed concerning that which the Dutch claimed in America, were finally settled. Henceforth there could be no question or doubt as to the title of England to this territory. It was necessary, however, to issue a new patent to the Duke of York, re-establishing him as proprietor of the land which had been given to him ten years before by King Charles. The new patent was expressed in practically the same terms as the preceding one in 1664. In one particular it went further than the earlier document, for it gave to the duke the right to govern not only British subjects within this territory, but also "any other person

or persons". Thus he had complete authority over non-English as well as English citizens of the colony.¹

Major Edmund Andros was commanded by the Duke to be the royal "lieutenant and governor" for the province of New York. He sailed from England in the autumn of 1674, and arrived at Staten Island on October 22. His commission was almost identical with that which had been issued to Governor Richard Nicolls ten years before. His instructions from the Duke under date of July 1, 1674, were more minute and specific, covering the details of trade, land owning, quit rents, imports and tariff, freedom of conscience and so on. Especially was the governor directed to satisfy the inhabitants, "for their protection and benefit, for the encouragement of planters and plantations, and the improvement of trade and commerce, and for the preservation of religion, justice and equity among them." Regarding the administration of justice the instructions were:

"As to ye course of Justice you are to take care yt 't be administered wth all possible equallity wthout regard to Dutch or English in their private concerns, 't being my desire as much as may be, that such as live under your governmt may have as much satisfaction in their condicon as is possible, and yt wthout ye least appearance of partiality, they may see their just rights preserved to ym inviolably—

"And as to ye formes of Justice, I thinke it best for you to put in execution such lawes rules and ordrs as you find have been established by Coll. Nicholls and Coll. Lovelace, and not to vary from them but upon emergent necessities, and ye advice of yor Councell and the gravest and experienced persons there; and if any such alteracon be made, that it be only temporary for a yeare, and if it be not confirmed by me within that time, then to be utterly voyd at ye end of that yeare and of no force at all, as if such alteracon or new law never had been primitted. I therefore recomend to you to continue ye Courts of Justice, as they have been es-

^{1.} The confirmation of this second grant is recorded in vol. 1, p. 1, of Deeds in the office of the Secretary of State of New York in Albany. It has been reproduced in the "Report of the Regents of the University on the Boundaries of the State of New York", 1873, p. 21. See also "Journal of the New York Assembly," March 8, 1673, p. 92.

SIR EDMUND ANDROS.

(1637-1714).

Soldier: Colonial Governor of "all the Duke of York's territories in America," including New York, 1674-7, 1678-81; in this capacity sat as judge at the trial of Acting Governor Philip Carteret, of East Jersey, for exercising illegal jurisdiction. On the consolidation of the New England governments in 1686 he was appointed Governor General, and New York was added to his jurisdiction in 1688. He was Governor of Virginia 1692-98, and of Guernsey 1704-6.

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Edmund Andros



tablished and used hitherto. And as to ye choice of Magistrates and Officers of Justice, I must referr yt to yor prudence, wch when you shal be upon ye place, will best direct you to those persons wch have most reputacon both for their abilities and integrity, and for those reasons most acceptable to ye Inhabitants. But you are not to make any officer for above one yeare or otherwise yn during pleasure."

On August 6, the Duke had transmitted to Andros a copy of the laws under which New York had been governed during the regime of Nicolls and Lovelace. These laws had been collated in one volume and the instructions of James were:

"To put in execucon ye said laws except such as shall have apparent inconveniences in them; and after your settlemt at New York wth ye advice and helpe of your Councell carefully to peruse and consider ye same and if you finde it necessary for ye ease and benefitt of ye people and ye good of my service to make any alteracons, addicons and amendmts in ye said laws, you are wth ye first opportunity to represent ye same unto me, to ye end you may receave from me such ordrs and direccons as shall be necessary for authorizing you to put ye same in execucon."

In a proclamation of November 9 Andros announced the will of James regarding the rights and properties of the ceded province and re-establishing the "Duke's Laws:"

"I have thought fitt to publish and declare. That all former grants privileges or concessions heretofore granted and all estates legally possessed by any under his Royall Highnesse before the late Dutch govrnment, As also all legall, judicial proceedings during that government to my arrivall in these parts are hereby confirmed; And the possessors by virtue thereof to remain in quiet possession of their rights. It is hereby further declared that the known Book of Laws formerly establisht and in force under his Royall highnesse government is now again confirmed by his Royall Highnesse the which are to be observed and practiced together with the manner and times of holding Courts therein menconed as heretofore.

^{2. &}quot;Documents Relative to the Colonial History of the State of New York", by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 218.

^{3.} Ibid., vol. III, p. 226.

And all Magistrates and Civill Officers belonging thereunto to be chosen and establisht accordingly."4

By this proclamation the town courts and the courts of session were formally re-established, and the officers who had been appointed by Governor Lovelace and removed by Governor Colve were reinstated. The two courts of sessions on Long Island and one for the towns of Esopus were revived. Sylvester Salisbury was appointed to be high sheriff on Long Island, Michael Siston sheriff of Albany, and George Hall sheriff of Esopus. The court of sessions established by Governor Nicolls in Albany in 1666 was revived and afterwards became a mayor's court. In two months after the proclamation, the first session of the new court of assizes was held in New York, on the day designated in the Duke's Laws, and was held regularly thereafter. The code became fixed as the general law of the province.

On the following day, November 10, Andros changed the name of the city from New Orange to New York, and the name of the fort from Fort William Henry to Fort James. At the same time he issued an order reviving the English form of government for the city of New York as it had existed under Governor Nicolls. Matthias Nicolls, secretary of the province, was appointed mayor, and John Lawrence deputy mayor. James Gibbs, who had been a councillor of Governor Lovelace, was made sheriff, and the aldermen were William Dervall, Frederick Philipse, Gabriel Minvielle and John Winder.

On November 13, 1674, three days after the issue of the decree of the governor, the mayor's court of New York was

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^{4. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 227. "The Colonial Laws of New York," vol. I, p. 108.

again convened. An order that the records should be copied thereafter in English was entered, and every paper offered was preserved in that language, except in the case of those Dutch or other foreign individuals who were too poor to pay for translation.

No important change was made in the mayor's court of New York by these acts of Andros. A long step was taken, however, towards the ultimate adoption of the English method of procedure; and the complete making over of the Dutch colony in all particulars into an English community proceeded rapidly. Matthias Nicolls, the new mayor, like Thomas Willett, who was mayor under Governor Nicolls, had long been a resident of the city when it was New Amsterdam. With two exceptions the twelve immediate successors of Nicolls in the mayoralty, were either of Dutch origin or had been residents of New Amsterdam under the Dutch. The provision that all papers should be in the English language introduced the English forms, but still, to a very considerable extent, the Dutch modes of practice prevailed. This condition of things continued for nearly a decade.

Mayor Nicolls and the board of aldermen who were inducted into office with him continued until October, 1675. At that time Andros granted a commission or charter under which the corporate government as it had before existed was reinstated; the number of aldermen was increased to six, and upon the corporation was conferred "full power and authority to treat courts, administrate justice, and rule and govern the inhabitants according to the laws of the province and the privileges and practices of the state."

For the court of sessions in New York the mayor, with any four aldermen, was authorized to sit. As before, the civil muni-

^{5. &}quot;Records of the Mayor's Court," vol. II.

cipal business and any criminal business which might come before the mayor's court, were discharged at the regular sittings, no arrangement being made for the separation of the civil from the criminal functions of the magistrates. Regular sittings of the court were fixed for every three weeks. Following the practice instituted by Nicolls, an order was made that all cases should be tried before a jury, but, as before, this custom was not strictly adhered to. The influence of the Dutch methods was still felt, and the Dutch practice of referring cases to arbitration was continued and practiced very generally for many years.

In an answer to the Lords of Trade about New York in 1678, Governor Andros described the courts then existing as follows:

- "I. The Governor is to have a Councell not exceeding tenn wth whose advice to act for the safty & good of the country, & in every towne, Village or parish a Petty Court, & Courts of Sessions in the several precincts being three, on Long Island, & Townes of New Yorke, Albany & Esopus, & some smale or poore Islands & out places; And the General Court of Assizes composed of the Governor & Councell & all the Justices & Magistrates att New Yorke once a yeare, the Petty Courts Judge of fiue pounds, & then may appeale to Sessions, they to twenty pounds & then may appeale to Assizes to ye King, all sd courts as by Law.
- 2. The Court of Admiralty hath been by speciall Comission or by the Court of Mayor & Aldermen att New Yorke.
- 3. The cheife Legislatiue power there is in the Governor with advice of the Councell the executive power Judgemts given by ye Courts is in the sheriffs & other civill officers.
- 4. The law booke in force was made by the Governor & Assembly att Hempsted in 1665 and since confirmed by his Royall Highnesse."

In 1682 two English lawyers arrived in the colony, and others followed them soon after. Naturally, the tendency of English practice to supersede the Dutch forms grew stronger, and

^{6. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 260.

it was not long before the system of special pleading as in vogue in England gradually forced its way into practice. Nevertheless, the English forms of procedure did not entirely supersede those of Dutch origin until well into the first and second decades of the eighteenth century. Finally however, arbitration, the particularly Dutch custom, ceased to be resorted to except in the case of disputed actions which were referred generaly to three persons, who were first called arbitrators and then referees. This custom of reference continued in its original form until 1772, when it was finally regulated by statute enactment.

The popular desire for home government which had been manifested under both the English and Dutch governors continued to grow in strength, and the question was brought forcibly to the attention of the governor and through him to the Duke of York. In frequent letters to Andros, the Duke of York commented unfavorably upon this public desire for a general assembly, expressing the opinion that the court of assizes, which was a legislative quite as much as a judicial body was sufficient for the purpose. Thus on January 28, 1676, he wrote:

"I have formerly writt to you touching Assemblyes in those conntreys and have since observed what severall of your lattest letters hint about that matter. But unless you had offered what qualificacons are usuall and proper to such Assemblyes, I cannot but suspect they would be of dangerous consequence, nothing being more Knowne then the aptness of such bodyes to assume to themselves many priviledges wch prove destructive to, or very oft disturbe, the peace of ye governmt wherein they are allowed. Neither doe I see any use of them wch is not as well provided for, whilest you and your Councell governe according to ye laws established (thereby preserving every man's property inviolate) and whilest all things that need redresse may be sure of finding it, either at ye Quarter Sessions or by other legall and ordinary ways or lastly by appeale to myselfe. But howsoever if you continue of ye same opinion, I shall be ready to consider of any proposalls you shall send to yt purpose."

^{7. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 235.

Again writing on the same subject, under date of April 6, 1675, he said:

"First yn touching Generall Assemblyes wch ye people there seem desirous of intimacon of their neighbour Colonies, I thinke you have done well to discourage any mocon of yt kind, both as being not at all comprehended in yor Instructions nor indeed consistent wth ye forme of governmt already established, nor necessary for ye ease or redresse of any grievance yt may happen, since yt may be as easily obtained, by any peticon or other addresse to you at their Generall Assizes (wch is once a yeare) where the same persons (as Justices) are usually present, who in all probability would be theire Representatives if another constitution were allowed."

Also, Sir John Werden, secretary of the Duke, in a letter to the governor, January 28, 1676, thus expressed these views of his royal master:

"It is his R^{II} Highss intencons to have all persons whatsoever treated with all humanity and gentleness that can consist with the honour and safety of yor governmt to the end yt where the laws doe inflict a punishment it may seeme rather for example to deterr others from the like crimes, than to afflict the party punished, except where his malice appears plainly to aggravate his offense."

Andros made a visit to England in the autumn of 1677 on private business, and the success with which he had governed the province won for him from the Duke a cordial reception. He received a patent of knighthood, and returned to New York in the summer of 1678 as Sir Edmund Andros. Almost from the first, after his return, he found difficulties encompassing him, and at once he was in serious controversy with Governor Philip Carteret of New Jersey, in an endeavor stringently to enforce one of the Duke's orders that all vessels bringing cargoes to his original territory, which included New Jersey, should enter at

9. Ibid., vol. III, p. 237.

^{8. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 230.





Thomas Dongan

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THOMAS DONGAN.

(1634-1715).

Soldier and Statesman; Earl of Limerick; Colonial Governor, 1683-88. In 1686 granted charter to City of New York and also to City of Albany.

the New York Custom House. In the end, Andros caused the arrest and imprisonment of Carteret. Upon trial before a special court of assizes which was presided over by Andros in person, Carteret was acquitted. As a result of this affair, representations were made to the Duke in regard to Andros, who finally was recalled in a letter from Windsor under date of May 24, 1680. He left New York on January 6, 1681, and sailed from Sandy Hook five days later. In the examination regarding his conduct in New York, which followed immediately upon his arrival in England, he was completely vindicated, and was complimented upon the success of his administration, being further appointed as "a gentleman of the King's Privy Chamber." When he left New York he commissioned Lieutenant Governor Brockholst to rule as commander-in-chief. Brockholst remained at the head of affairs until the coming of Colonel Thomas Dongan, in 1683, but his administration was not marked by any distinguishing characteristics of enterprise or capacity.

As soon as it was decided in England to send Dongan to take the place vacated by Andros, a commission was issued to him, September 30, 1682, practically the same as that given to his predecessor. He did not sail for his new post of duty until the next summer and he arrived off Nantasket, in Massachusetts Bay, on August 10, 1683. From Boston he journeyed overland and across the sound to Long Island and thence to New York, reaching that city upon the twenty-fifth of August. On the Monday following his arrival he appeared at the city hall and made public his commission, announcing at the same time that he was directed to confirm to the city all its existing rights and

^{10. &}quot;History of the State of New York," by J. R. Brodhead, vol. II, p. 372; "Colonial Laws of New York," vol. II, p. 25. "Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, pp. 331-333.

privileges and even more, as might be found necessary in the future. In addition to his advisors in the council, Anthony Brockholst was retained in the office which he had held under Andros. John Spragg replaced John West as secretary of the province and of the court of assizes, and Lucas Santen was appointed collector or receiver general in place of William Dyre. Cornelis Steenwyck was named as mayor. In Dongan's instructions he was authorized by the Duke to erect courts:

"I doe also hereby authorize you wth advice of my sd councill to elect and settle such and soe many courts of Justice & in such places as you shall wth advice of my said Councill judge to be necessary for the good governmt of the said place & for adjudgeing and determineing all mattrs Civill and Criminall wherein you are to take care that ye same be as nere answerable to ye laws and Courts of Justice in England as may be, and to give me an acct of such courts as you shall thinke fitt soe to erect, to ye end I might confirme or reject the same as I shall see cause, but the said courts may proceed and hold Recognizance of such matters as you and yor Councill shall appoint until my pleasure be signified to ye contrary."

A court of session was allowed to the city, and the mayor and aldermen were commissioned to be justices of the peace.

In 1681, during the Nicholson regime, the people had actively renewed their demand for a provincial assembly, for which they had been constantly contending from back in the time of the Dutch rule. A question of the collection of import duties arose. Several merchants had refused to pay duties on goods which they had imported, and, in the absence of the collector, William Dyer, had removed their goods from the vessels which had brought them into port. The collector, proceeding in the name of the king, seized these goods, and suit was brought against him. In the trial which followed the verdict

^{11. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 333.

was against him, and at the same time the jury took the opportunity to present to the court of assizes that the lack of a provincial legislative body which could pass laws governing the administration of affairs was a very great grievance. In this emergency the court appointed John Young, the high sheriff of Long Island, to draw up a petition to the Duke of York, asking for the establishment of a general assembly for the province.¹²

Recognizing the imperativeness of these demands the Duke of York finally concluded that they must be acceded to. Accordingly in his instructions to Dongan he gave him power to call a general assembly:

"You are also wth advice of my Councill wth all convenient speed after yor arrivall there, in my name to issue out Writts or warrts of Sumons to ye sevrall Sheriffes or other proper Officers in every part of yor said governmt wherein you shall expresse that I have thought fitt that there shall be a Gen'll Assembly of all the Freeholders, by the prsons who they shall choose to repsent ym in ordr to consulting wth yorselfe and the said Councill what laws are fitt and necessary to be made and established for the good weale and governmt of the said Colony and its Dependencyes, and of all the inhabitants thereof, & you shall issue out the said Writt or Sumons at least thirty dayes before the time appointed for ye meeting of the said Assembly, weh time and also the place of their meeting (weh I intend shal be in New Yorke) shall also be menconed & expressed in the said Writt or Sumons, and you wth advice of my said Councill are to take care to issue out soe many Writts or sumons and to such officers, in every part, not exceeding eighteene, soe yt the planters or Inhabitants of every part of ye sd governmt may have convenient notice thereof and attend at such ellection, if they shall thinke fitt. And wn the said Assembly soe elected shalbe mett at ye time and place directed, you shall lett ym know that for the future it is my resolucon that ye said Genll Assembly shall have free liberty to consult and debate among themselves all mattrs as shall be apprehended proper to be established for laws for the good governmt of the said colony of New Yorke and its Dependencyes, and yt

^{12. &}quot;History of the State of New York," by J. R. Brodhead, vol. II, p. 352. "Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 287.

if such laws shalbe propounded as shall appeare to mee to be for the manifest good of the Country in generall and not prjudiciall to me, I will assent unto and confirme ym In the passing and enacting of all such laws as shalbe agreed unto by the said Assembly, wch I will have called by the name of the Generall Assembly of my Colony of New Yorke and its Dependencyes wherein the same shalbe (as I doe hereby ordaine they shalbe) prsented to you for yor assent thereunto."

Acting in accordance with these orders, Dongan convened this assembly in New York City, October 17, 1683. It was the first real legislative body to meet in the province of New York. According to the instructions of the duke, the membership of the assembly was to be eighteen representative citizens selected by the governor and his council, four from the city of New York, two from each of the three ridings of Yorkshire, one from Staten Island, two from the towns of Esopus, two from Albany and Rensselaerswyck, one from Schenectady, one from Pemaguid, and one from Martha's Vineyard and Nantucket. Six delegates were chosen by a direct vote of the freeholders or by a delegate convention. The membership of this first assembly has not been preserved, but other records show that among its members were Henry Beeckman, William Ashford, Giles Goddard, Samuel Mulford, John Lawrence, Matthias Nicolls and William Nicolls. The clerk was John Spragg, an important official individual, inasmuch as he was also secretary of the province, a member of Dongan's council and clerk of the court of assizes. During this first session of three weeks the assembly passed fifteen acts; most conspicuous among these was that which was called "The Charter of Libertyes and priviledges granted by his Royall Highnesse to the Inhabitants of New Yorke and its Dependencyes."

^{13. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 331.

Among other acts passed by this assembly was that of November 1, 1693, entitled "An Act to settle Courts of Justice." By this act a judicial system consisting of four tribunals was decreed for the province. These were the town or justices' courts for the trial of small causes to be held each month; the county courts, or courts of session, to be held quarterly or half yearly: a general court of over and terminer and general gaol delivery, with original and appellate jurisdiction; and a court of chancery, to be the supreme court of the province.14 This act also provided that the courts should "not be or remaine Longer in force, than for the time & space of Two Years and until the End of the sitting of the next Assembly after the Expiration of the Said Two Years."

As judges of the new court of over and terminer, Dongan appointed Matthias Nicolls, and John Palmer, an English lawyer who had come to New York from Barbadoes, in 1674. The governor retained for himself, as all his predecessors had done, the function of a surrogate or probate judge for the whole province. The governor and council also constituted a court of exchequer, to meet on the first Monday of each month.

The first historian of New York, writing about 1757, said that all "laws made here antecedent to this period (1691) are discharged both by the legislature and the courts of law; the validity of the old grants of the powers of government, in several American Colonies, is very much doubted in this province."15

^{14.} The original of this act is not in the office of the Secretary of State in Albany. A copy is in the manuscript compilation of the "Dongan Laws" formerly in the office of the Secretary of State, but now in the New York State Library. That the act was received by the Board of Trade on February 17, 1684, appears from the transcript of the journal thereof. See "Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 354, and "Colonial Laws of New York," vol. I, p. 125.

15. "History of New York", by William Smith, Edition of 1814, p. 124.

But, as another commentator upon this colonial legislation has said, it was never doubted in England. While general legislative power for England was never claimed by any of her sovereigns, it was never doubted that the crown possessed this high prerogative power over the colonies, and that this power was communicable to a subject. In New York the Duke of York's deputy-governor might, as he did, declare that "no jury shall exceed the number of seven, nor be under six, unless in special causes upon Life and Death, the justices shall think fit to appoint twelve,"—the verdict, in civil cases, to be by a majority vote and perjury to be capital felony in certain cases. But in England, Macauley tells us that "the most violent and imperious Plantagenet never fancied himself competent to enact, without the consent of his great council, that a jury could consist of ten persons, instead of twelve."

Thus the year 1683 is memorable in the history of New York, as that in which the first representative assembly convened and entered upon the business of legislation. The laws which were propounded at the two sessions of this assembly are of singular historical interest, but, for lack of evidence of their ever having been assented to by the duke, they have been regarded by some authority as not being legal enactments. Nevertheless, some of the more important of these measures were substantially re-enacted by the assembly of 1691, and in the end became incorporated in the laws of the colony.

At the close of the first meeting of this assembly it was voted to adjourn to meet again on October 21, 1684. At the second meeting thirty-one acts were passed, among them, the last of the session, being that to abolish the general court of assizes. When this second meeting adjourned it was to meet in September, 1685. Upon that date it was dissolved by the gov-

ernor, and a new assembly called to meet in New York on October 20 following. Of this assembly William Pinhorne was speaker, and six laws were enacted. It adjourned to meet in September, 1686, but before that time "such changes happened that it never met again." These changes, as will presently be seen, were the dissatisfaction of James with the actions of the assembly, and his abolishing of that legislative body.

Meantime, on November 9, 1683, the mayor and aldermen of New York petitioned Dongan that the "ancient customes, Priviledges and Immunityes" granted by Governor Nicolls in 1665, should be confirmed by a charter from the Duke of York; and also

"that the Recorder bee appointed by the Governor and Councill who shall be Judge of the City and Corporacon and be aydeing and assisteing to the Mayor and Aldermen & Comon Councill in all matters that relate to the well beinge and supporte thereof."

And that "a Sheriff bee annually appointed by the Governor & Councel." 16

When this petition was presented to the governor he graciously agreed to it "in almost every particular," and thereupon ordered that the substance of it should immediately be put into practice "until such times as his Royal Highnesses pleasure shall be further known therein." The metropolitan officers who were serving were re-appointed. John West was commissioned to be clerk of the city of New York, and John Tudor, a lawyer, to be sheriff.

On January 14 of the succeeding year, Dongan issued a commission as recorder to James Graham, who for seventeen years, with but one slight interruption, continued to hold that office.

^{16. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 338.

On the day following this appointment, all the new magistrates went in a body to the fort, where they were sworn in before the governor and council; then they returned and opened court, the recorder taking his seat on "ye right hand of ye mayor."17 Thomas Rudyard was appointed attorney general of the province. Rudyard, a London lawyer, was a Quaker, who had been a member of William Penn's Council in Pennsylvania in 1670, and subsequently deputy governor in New Jersey in 1683, from which position he was dismissed by the proprietors of New Jersey a year later. As attorney general of New York his chief duty was to look after the interests of the king and the duke, but he held this office for only about a year. To succeed Rudyard, James Graham, who was then the recorder for the city of New York was appointed attorney general. Isaac Swinton was appointed to be clerk in the court of chancery in the place of James Graham.

Upon the accession of the Duke of York to the throne of England as King James II. in 1685, the legal status of the province of New York underwent a change. It was no longer the private possession of a royal English subject holding it as proprietor, but it became an American province of the crown. Therefore, in respect to its local government and the appointment of officers to administer it, New York was a county palatine, like the counties of Chester, Durham and Lancaster, in England, in which from a remote period, down to the time of King Henry VIII., the Earl of Chester, the Bishop of Durham and the Duke of Lancaster, respectively, had *jura regalia* as completely as the king in his palace, and consequently administered justice within their respective counties, by judges

^{17. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 337.

appointed by themselves and not by the crown. But, in this case, it was the king sitting in council, who was the immediate source of all power, and new commissions to the provincial officers became necessary.

Notwithstanding that, as duke, James had yielded to the desires of the people for a provincial assembly, he was far from satisfied with the result of the experiment. Some of the acts of the first session of the general assembly displeased him very much, particularly the passage of the so-called charter of liberties. The charter was really not a charter at all. Although it was an act of the assembly it had no force until approval by the governor and duke, and as it was finally vetoed by James and thus became null and void, it was in the end no more than an expression of opinion by the representatives of the people as to what they consider the popular rights and privileges. Since that time James had ascended to the throne, and now he was more determined than before to have no representative assemblies who might presume to interfere with his royal powers.

On May 29, 1686, he issued to Dongan a new royal commission with special instructions in regard to the manner in which he should govern the colony, and suppressed the earlier commission to the governor. It reached New York in September of that year. Under this commission and instructions the assembly was abolished, and all legislative power was placed in the hands of the governor and council, subject only to the approval of the king and his privy council. At the same time Dongan was especially empowered to erect courts of law, and if he should consider that necessary, to appoint judges, justices of the peace, and other officers; with this admonishment:

"And in the choice and nomination of the members of our Council as also the Principal Officers, Judges, Assistants, Justices & Sherifs, you are

always to take care that they bee men of estate and abilitys and not necessitous people or much in debt, & that they bee persons well affected to Our Government."¹⁸

His instructions also included a specific order against the assembly's "charter of liberties" so offensive to the duke, who was now king:

"You are to declare Our Will & pleasure that ye said Bill or charter of Franchises bee forthwith repealed & disallowed, as ye same is hereby Repealed, determined & made void."

In April, 1686, the same year that he received his new commission, Governor Dongan granted to the city of New York the famous charter which has ever since borne his name; and in the following July he granted a similar charter of incorporation to the city of Albany. The Dongan charter provided for annual elections, and that the inhabitants of each ward of the city should elect one alderman, one assistant alderman, and one constable; and that a mayor, a recorder, and a sheriff, should be appointed by the governor and council, and a high sheriff be appointed by the mayor. Under this charter the following officers were appointed for the city of New York: Nicolas Bayard, mayor; James Graham, recorder; John West, town clerk; Jatu Knight, sheriff; and Peter Delancy, chamberlain, or treasurer.

Provision was made by this charter to New York city that the mayor and other municipal magistrates should be justices of the peace and should hold a court of common pleas:

"AND FURTHER, I do by these presents, grant, for and on behalf of his most sacred majesty aforesaid, his heirs and successors, that the Mayor and Recorder of the said city for the time being, and three or

19. Ibid., vol. III, p. 370.

^{18. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 369.

more of the Aldermen of the said city, not exceeding five, shall be justices and keepers of the peace of his most sacred majesty, his heirs and successors, and justices to hear and determine matters and causes within the said city and liberties, and precincts thereof; and that they or any three or more of them, whereof the Mayor and Recorder, or one of them, for the time being, to be there, shall and may forever hereafter, have power and authority, by virtue of these presents, to hear and determine all and all manner of petty larcenies, riots, routs, oppressions, extortions, and other trespasses and offenses whatsoever, within the said city of New York, and the liberties and precincts aforesaid, from time to time, arising and happening, and which arise or happen, and any ways belonging to the offices of justices of the peace, and the correction and punishment of the offences aforesaid, and every of them, according to the laws of England, and the laws of the said Province; and to do and execute all other things in the said city, liberties, and precincts aforesaid, so fully and in amply manner, as to the commissioners assigned, and to be assigned, for the keeping of the peace in the said county of New York, doth or may belong.

"AND I DO, by these presents, for and on behalf of his most sacred majesty aforesaid, his heirs and successors, give and grant unto the aforesaid, Mayor, Aldermen, and Commonalty, of the said city of New York, and their successors, that they and their successors shall and may have, hold, and keep, within the said city, and liberties, and precincts thereof in every week in every year forever, upon Tuesday, one Court of Common Pleas, for all actions of debt, trespass upon the case, detinue, ejection, and other personal actions; and the same to be held before the Mayor, Recorder, and Aldermen, or any three of them, whereof the Mayor or Recorder to be one, who shall have power to hear and determine the same pleas and actions, according to the rules of the common laws, and acts of general assembly of the said province."

Previous to the granting of this charter, the mayor's court, as formerly under the Dutch, united the twofold functions of a council or board, for the regulations of the municipal affairs of the city, and of a court of justice. Legislative and judicial matters alike came before the same body, and the only distinction made between the two was that usually the business of the court was transacted before the consideration of municipal affairs was undertaken. By the charter, however, the legislative and judicial functions of the mayor, recorder and aldermen were separated,

and, as respects their judicial powers, there was a further separation between the powers they possessed as criminal magistrates and those which they exercised as judges in civil cases. Accordingly, three tribunals were organized, each composed of the same persons, but each having duties assigned to it wholly distinct and different from those pertaining to the others. These were the common council, the mayor's court, called in the charter the court of common pleas, and the court of sessions.

In the common council was vested exclusively the power of passing laws and ordinances for the government of the city. The mayor's court was for the trial of civil actions only. Under the provisions of the charter authorizing the mayor, recorder, and aldermen to try criminal offences, a criminal tribunal was organized, at first called the quarter sessions, and, after 1688, the court of sessions. By the courts of justice" passed by the assembly of 1683, a court of sessions was established which, like the same courts in the other counties, had both civil and criminal jurisdiction. It was on account of this additional court in the city, and of the desire to have a permanent law officer attached to the corporation, who should not go out upon the annual change of magistrates, that the mayor and aldermen applied to Dongan to appoint a recorder. Immediately after the naming of Graham, this court was organized by the mayor, recorder and aldermen, the recorder presiding as the chief officer. As this court sat but once every three months, while the mayor's court sat every two or three weeks, the former was deemed a court of a higher grade, in which at first the more important civil actions were brought, and the principal criminal offences tried. It continued in existence three years, but by that time it was apparent that the mayor's court

and the over and terminer were sufficient for the dispatch of the legal business of the city.

The circuit of the oyer and terminer was held in the city twice a year, and as the mayor's court had equal jurisdiction with the court of sessions, with the advantage of sitting more frequently, there was comparatively little for the court of sessions to do. It was not, therefore, embraced in the general provision made by the charter, nor yet was it rejected. The act creating it had been passed by the general assembly, had been signed by Dongan before he granted the charter, and subsequently ratified by James. Consequently, it was not in Dongan's power to repeal it, but, with the general acquiescence of all parties, the court seems to have been dropped, and the quarter sessions, as a court of exclusive criminal jurisdiction, substituted in its stead.

Under date of February 22, 1687, Governor Dongan made a report upon the condition of affairs in the province to the Committee of Trade. In this report he describes the courts then in existence:

"The Courts of Justice are most Established by Act of Assembly and they are

- "I. The Court of Chancery consisting of the Governor & Council is the Supreme Court of this Province to which appeals may be brought from any other Court.
- "2. The Assembly finding the inconvenience of bringing of ye peace, Sheriffs, Constables & other prons concerned from the remote parts of this Government to New York did instead of the Court of Assizes which was yearly held for the whole Government of this Province erect a Court of Oyer & Terminer to be held once every year within each County for the determining of such matters as should arise within them respectively, the members of which Court were appointed to bee one of the two judges of this province assisted by three justices of the peace of that County wherein such Court is held. Which Court of Oyer & Terminer has likewise power to hear appeals from any inferior Court.
- "3. There is likewise in New York & Albany a Court of Mayor & Aldermen held once in every fortnight from whence their can be noe

appeal unless the Cause of Action bee above the value of Twenty pounds, who have likewise privilege to make such by-Laws for ye regulation of their own affairs as they think fitt, soe as the same be approved of by ye Gov^{*} & Council.

"Their Mayors, recorders, Town-Clerks & Sheriffs are appointed by the Governor.

"4. There is likewise in every County twice in every year (except in New York where its four times & in Albany where its thrice) Courts of Sessions held by the Justices of ye peace for the resp'ive Countys as in Engld.

"5. In every Town wtn ye Government there are 3 Commissioners appointd to hear and determin all matters of difference not exceeding the value of five pounds which shall happen within the respective Towns.

"6. Besides these, my Lords, I finding that many great inconveniences daily hapned in the managemt of his Mats particular concerns within this Province relating to his Lands, Rents, Rights, Profits & Revenues by reason of the great distance betwixt the Cursory settled Courts & of the long delay which thereon consequently ensued besides the great hazard of venturing the matter on Country Jurors who over and above that they are generally ignorant enough & for the most part linked together by affinity are too much swayed by their particular humors & interests, I thought fit in Feb. last by & with ye advice & consent of ye Council to settle and establish a Court which we call the Court of Judicature (Exchequer) to bee held before ye Govr & Council for the time being, or before such & soe many as the Govr should for that purpose authorize, commissionat & appoint on the first Monday in every month at New York, which Court hath full power and authority to hear, try & determin Suits, matters and variances arising betwixt his Maty & ye Inhabitants of the said Province concerning the said Lands, Rents, Rights, Profits & Revenues.

"The Laws in force are ye Laws called his Royal Highnesses Laws and the Acts of the General Assembly, the most of which I presume yr Lops have seen & the rest I now send over by Mr Sprag to whom I refer yr Lops in this point." 20

In 1688, King James decided that it was essential for the carrying out of his plans in regard to the government of the American colonies, that those of New England should be consolidated with the provinces of New York and New Jersey, and

^{20. &}quot;New York Entries," vol. II, p. 1. "Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 389.

that this "Territory and Dominion of New England in America" should be placed in control of one governor general, who should have vice-regal authority, as the representative of the British crown. Sir Edmund Andros, who had preceded Dongan as governor of New York, was appointed to this exalted position of captain-general and governor-in-chief. At that time he was in Boston, the governor of New England, where he had been since 1686. On August 11, 1688, he arrived in New York to take the government of that province from the hands of Dongan, and four days later his commission was proclaimed at Elizabethtown, the capital of the New Jersey colony. His commission provided for his council as follows:

"And you are accordingly forthwith to take upon you the execution of the place and trust Wee have reposed in you, and with all convenient speed to call together the Members of the Councill, by name Joseph Dudley, William Stoughton, Robert Mason, Anthony Brockhollz, Thomas Hinckley, Walter Clark, Robert Treat, John Fitz Winthrop, John Nicholson, Frederick Philips, Jervis Baxter, John Pinchon, Peter Buckley, Wait Winthrop, Richard Wharton, Stephen Courtland, John Usher, Bartholomew Gidney, Jonathan Ting, John Hincks, Edward Ting, Barnaby Lathrop, John Sandford, William Bradford, Daniel Smith, Edward Randolph, John Spragg, John Walley, Nathaniel Clerke, John Coxhill, Walter Newberry, John Green, Richard Arnold, John Alborough, Samuel Shrimpton, John Young, Nicholas Bayard, John Palmer, William Brown Junior, Simon Linds, Richard Smith, and John Allen, Esquires: At which meeting after having published our said Commission or Letters Patents, constituting you our Captain General and Governor in Chief of our said Territory and Dominion, you shall after first taken the like Oath yourself) administer to the members of our Councill, the Oath for the due execution of their places and trusts."21

Andros did not remain long in New York and in the command of his newly acquired "dominion of New England." Indian

^{21. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 543.

hostilities in the northern part of New England required his return to Boston, and going from New York in October, 1688, he left the command of affairs in the hands of Lieutenant Governor Francis Nicholson, whom he had summoned from Boston for that purpose. Presently the plans of King James for this imposing dominion of New England went wrong. In November, Prince William of Orange landed in England, and in December King James abandoned his throne, and within a month early in 1689, William and Mary were proclaimed King and Queen of Great Britain. The secession of Massachusetts from the provinces consolidated by James immediately followed, and, other colonies taking pattern, the dominion was quickly broken up.

When the news of the accession of William and Mary to the throne arrived in New York, there was naturally great excitement. Lieutenant Governor Nicholson was not a man for the emergency, and, at this important crisis, Captain Jacob Leisler, who thus attained prominence in the history of New York, came to the front. Leisler, claiming to be acting in the interest of the Protestant King William and Queen Mary, took his action, as he asserted, to hold the province against the possibility of the Catholic supporters of King James seizing upon it Nicholson betook himself to England as soon as possible, and the doughty Dutch captain was temporarily in control of affairs. He summoned as his councilors Peter De La Noy, Samuel Staats, Hendrick Jansen, and Johannes Vermilye, of New York; Gerardus Beeckman, of Kings county; Samuel Edsall, of Queens county; Thomas Williams, of Westchester, and William Lawrence, of Orange county. He issued new commissions for the justices, sheriff, military and other officers, and those who held commissions from Dongan were ordered to surrender them, and





William Smith
Chief Justice of New York and Canada

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WILLIAM SMITH.

(1728-1793).

Jurist and Historian; author of "History Province of New York"; Chief Justice of New York under the Crown, 1778-83; Chief Justice of Canada, 1796.

give up their place to new appointees. In January, 1690, he issued several commissions for courts of over and terminer, with Peter De La Noy as judge.

Leisler's career was exciting but short. In January, 1690, King William commissioned Colonel Henry Sloughter to be governor of the colony as the successor of Nicholson, and Leisler's title to the office of lieutenant governor, if indeed he had any, was not recognized. Major Richard Ingoldesby, who was in command of the troops on one of the vessels comprising the fleet which took Governor Sloughter to America, reached New York in January, 1691, before his superior. He proceeded summarily against Leisler, whom, with the persons of his council, he arrested and put in confinement. On March 20 Governor Sloughter arrived and took possession of the fort.

The councillors who were appointed for him were Frederick Philipse, Stephen van Cortland, Nicholas Bayard, William Smith, Gabriel Minvielle, Chidley Brook, William Nicolls, Nicholas de Meyer, Francis Rombout, Thomas Willett, William Pinhorne, and John Haines.²² From this board the so-called Leisler men were left out. Frederick Philipse, Stephen van Cortland and Nicholas Bayard had been members of the council of Governor Andros; William Smith, Gabriel Minvielle, Nicholas de Meyer, and Francis Rombout had been nominated by Governor Dongan. The new governor at once issued commissions to John Lawrence as mayor, and William Pinhorne as recorder. The sheriffs of the various counties were appointed, and Thomas Newton, of Boston, who was reputed to be the best lawyer then in America, was named attorney-general. In the following

^{22. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 685.

month Newton resigned his position and James Graham was appointed to succeed him.²³

On March 24 a special commission was issued for the court of oyer and terminer to try Leisler and his associates. The members of this commission were Joseph Dudley, and Thomas Johnson, who had been appointed by the governor to be judges in admiralty; Sir Robert Robinson, Colonel William Smith, Recorder William Pinhorne, Mayor John Lawrence, Captain Jasper Hicks of the frigate Archangel, Major Ingoldesby, Colonel John Young and Captain Isaac Arnold. Leisler and his son-inlaw Milborne were condemned to death and hanged. Several of their associates were for a time held in prison under sentence but were finally pardoned.

The first period of juridical history of New York, as an English province, was closed by the English revolution of 1688, fitly enough characterized as the "happy revolution" in England and for Englishmen living there, but full of disappointments to English subjects living in distant America. It was the Englishmen at home who gained new guarantees of constituted rights, enlarged freedom from arbitrary power, and security against unrestrained prerogative. As for Englishmen in the colonies, their relation to the crown remained what it always had been, which was according to King William's first chief-justice of the king's bench Holt, that "their law is what the king pleases"; for, according to Granville,—a member of his privy council,—"the governor's instructions are the law of the land, for the king is the legislator of the colonies."

By his commission from William and Mary, Sloughter was authorized to convene a representative assembly.

^{23. &}quot;Colonial Minutes", vol. VI, pp. 5-15-29.

"And we do hereby give @ grant unto you full power and authority, with the advice @ consent of our said Councill from time to time as need shall require, to summon & call generall Assemblics of the Inhabitants being Freeholders within your Government, according to the usage of our other plantations in America. And our Will and Pleasure is that the persons thereupon duely elected by the Mayor part of the Freeholders of the respective Countys and places and so returned and having before their sitting taken the oaths of Allegiance and Supremacy and the Test-which you shall Commissionate fit persons under our seal of New York to administer, and without taken which none shall be capable of sitting though elected-shall be called and held the Genral Assembly of that our Province and the Territories thereunto belonging. And that you, the said Henry Sloughter, by @ with the consent of our said Councill and Assembly, or the major part of them, respectively have full power and authority to make constitute and ordaine Laws Statutes @ ordinances for ye republique Peace, welfare, and good Government of our said Province and of the people @ Inhabitants thereof, and such others as shall resort thereto & for the benefit of us our Heirs and Successors. Which said Laws, Statutes, and Ordinances are to be (as near as may be) agreeable unto the Laws and Statutes of this our kingdom of England. Provided that all such Laws, Statutes & Ordinances, of what nature or Duration soever, be within three months, or sooner, after the making thereof, transmitted to us, under our seal of New York for our Approbation or Disallowance of the same, as also Duplicates thereof by the next conveyance. And in case any or all of them, being not confirmed by Us Shall at any time be disallowed @ not approved, and so signified by Us, our Heirs, & Successors, under our or their Sign Mutual and Signet, or by order of our or their Privy Council unto you the said Henry Sloughter, or to the Commander in Chief of the said Province for ye time being, then such and so many of them as shall be soe disallowed and not approved shall from thenceforth cease, determine @ become utterly voyd and of none effect, any thing to the contrary thereof notwithstanding."24

On April 6, 1691, the assembly was summoned to meet, and this was "the first time the popular representatives of the province had convened under direct authority of the crown," their meetings previously having been by summons by the governor of the province, as the representatives of the ducal proprietor. The members of this assembly were James Graham, William Mer-

^{24. &}quot;Documents Relative to the Colonial History of the State of New York", by E. B. O'Callaghan, M. D., LL.D., vol. III, p. 624.

ritt, Jacobus Van Cortland and Johannes Kip, for New York; Dierck Wessells and Levinus Van Schaick, for Albany; Henry Beeckman and Thomas Garton for Ulster and Dutchess counties; John Pell for Westchester county; Elias Duksberry and John Dally for Richmond county; Henry Pierson and Matthew Howell for Suffolk county; John Bound and Nathaniel Pearsall for Queens county; Nicholas Stillwell and John Poland for Kings county, and Killaen Van Rensselaer for Rensselaerswyck.²⁵

The law-making power was vested not in this body, however, but in the governor, acting with the consent of the council and a majority of the assembly, subject of course to the approval of the sovereign. To the end of the colonial period, the enacting clause of all bills was, "Be it enacted by his Excellency the Governor, by and with the consent of the Council and Assembly, and by the authority of the same." Some very notable legislation was effected, however, by this assembly. It re-enacted, with slight variations of language, some of the laws passed by the assembly of 1683, one of which, entitled "An act for declaring what are the rights and privileges of their Magesties' subjects inhabiting within this province of New York," does not differ greatly from the "Charter of Libertyes and privileges" of Dongan's assembly; but it met the untoward fate of its original, and was vetoed by the king, six years after its passage.

But one of its most important works was providing a system of county government by officers (supervisors) chosen by the electors of the several towns, and a county treasurer, elected by the voters of the county at large. Though this scheme of county government was abolished in 1701, it was re-established in June,

^{25. &}quot;Documentary History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. II, p. 250. "History of New York" by William Smith, vol. I, p. 112.

1703, and has continued ever since without material modification. Counties in New England and in the Southern States have never been much more than mere geographical expressions, without any corporate existence or system of local administration. The New York supervisor system of local government, thus created, "was destined to have a profound influence on the subsequent development of local administration in the United States." 26

One of the first proceedings of this Assembly was to adopt the following resolution:

"Upon an information brought into this House by several Members of the House, declaring, That the several Laws made formerly by the General Assembly, and his late Royal Highness James Duke of York, &c, and also the several Ordinances, or reputed Laws, made by the preceding Governors and Councils for the Rule of their Majesties Subjects within this Province, are reported amongst the People, to be still in force:

"Resolved, Nemine Contradicente, That all the laws consented to by the General Assembly, under James Duke of York, and the Liberties and Privileges therein contained granted to the People, and declared to be their Rights not being observed and not ratified and approved by his Royal Highness, nor the late King, are null, void, and of none effect. And also the several Ordinances or reputed laws made by the late Governors and Councils, being contrary to the Constitution of England, and the Practice of the Government of their Majesties other Plantations in America, are likewise null, void, and of none effect nor force within this Province."

On May 6, 1691, the assembly passed "An act for the Establishing courts of judicature for the Ease and benefitt of each respective Citty Town and County within this Province." This act changed the town courts into courts of justices of the peace,

^{26. &}quot;Comparative Administrative Law," by Frank J. Goodnow, vol. I, p. 168.

^{27.} Journal of the New York Assembly, p. 8.
28. This act is chapter four of Livingston & Smith and Van Schaack, where the title only is printed. It is printed in full in Fowler's Bradford, p. 2. The title only is printed in Baskett, p. 8. For note in reference to this act see Fowler's Bradford, p. CV. The act is also printed in full in "Colonial Laws of New York", vol. I, pp. 226-231.

created a court of common pleas for each county, except the counties of New York and Albany, to be held by a judge commissioned by the governor, and courts of general sessions for each of the counties; also it made for a court of chancery the same provisions that had been made by the act of 1683. But the most important feature in the act was the creation of a supreme court. It declared that a supreme court of judicature should be established in the city of New York to be composed of a chief justice and four assistant justices, to be appointed by the governor, and that it should have cognizance of all actions, civil, criminal or mixed, as fully and amply as the courts of king's bench, common pleas or exchequer in England, and should have power to establish rules and ordinances, and to regulate the practice of the court. Also, courts of general sessions of the peace were organized as criminal tribunals, distinct and separate from the courts of common pleas, which were courts for the trial of civil actions only. In all the counties except New York and Albany, the courts of general sessions were held twice a year; in Albany, three times a year; and in the city of New York, four times a year. The civil jurisdiction of the court of common pleas was essentially the same as that of the former court of sessions; and the term of the court began on the day after the sitting of the general sessions, the terms of both courts being limited to two days each. By this act the court of oyer and terminer was abolished, but, in conformity to the organization of the courts of Westminster, its name was retained, to designate the criminal branch of the supreme court.

Governor Sloughter did not long survive his arrival in America. In July, four months after he had landed on Manhattan Island, he was suddenly taken by illness and died within a few hours. In the emergency the provincial council summoned





Joseph Dudley

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JOSEPH DUDLEY.

(1647-1720).

President of New England, 1686; Chief Justice of Massachusetts, 1687-89; Chief Justice of New York, 1690-93; Lieutenant Governor Isle of Wight, 1694-1702; Member of British Parliament, 1701; Governor of Massachusetts, 1702-15.

Major Richard Ingoldesby and made him acting governor of New York, until a governor should be appointed by the King. The administration of Ingoldesby extended to a little over thirteen months, but was marked by no event of special importance.

On August 29, 1692, Colonel Benjamin Fletcher, who had been commissioned as governor to succeed Sloughter, arrived and took control of affairs. The commission of Fletcher was almost identical with that held by Sloughter. In this commission he was empowered to erect courts of judicature and appoint justices with the advice and consent of the council, but, in the private instructions which were issued to him, he was admonished to create no courts or offices of judicature, not already established. The members of Fletcher's council were Chief-Justice Joseph Dudley, Frederick Philipse, Steven Van Cortlandt, Nicholas Bayard, William Smith, Gabriel Minville, Chidley Brooks, William Nichols, Thomas Willett, William Pinhorne, Thomas Johnson, Peter Schuyler, John Lawrence, Richard Townley and John Younge. A year later Caleb Heathcote, who later became a prominent figure in New York's history, took the seat of Dudley in the council.

Appended to a list of all the officers in the civil service of the province on April 20, 1693, made by Matthew Clarkson, the secretary is "An Account of all Establishments of Jurisdictions within this Province," as follows:

"Single Justice. Every Justice of the Peace hath power to determine any suite or controversy to the value of forty shillings.

"Quarter Sessions. The Justices of the Peace in quarter Sessions have all such powers and authorities as are granted in a Commission of ye Peace in England.

"County Court. The County Court or common Pleas hath cognizance of Civil accons to any value, excepting what concerns title of land; and noe accon can be removed from this Court if the damage be under twenty pounds.

"Mayor & Aldermen. The Court of Mayor and Aldermen hath the same power with the County Courts.

"Supreme Court. The Supreme Court hath the power of Kings Bench, Common Pleas & Exchequer in England, and noe accon can be removed from this Court under £100.

"Chancery. The Governour and Councill are a Court of Chancery, and have the powers of the Chancery in England, from whose Sentence or decree nothing can be removed under £300.

"Prerogative Court. The Governour discharges the place of Ordinary in granting administracons and proveing Wills & The Secretary is Register. The Govern^r is about to appoint Delegates in the remoter parts of the government with Supervision for looking after intestates estates and providing for orphans.

"Court Marshall. The Govern*. Hath established a Court Martiall att Albany whereof Major Richd Ingoldesby is President and Robert Livingston Judge Advocate, who with the other commissionated Captains att Albany have power to exercise Martiall Law being a frontier garrison and in actuall warr.

"Admiralty. Their Majesties reserve the appointment of a Judge, Register, and Marshall.29

On the death of Queen Mary, in 1694, King Willam succeeded to the sole possession of legal authority, and he in 1697, issued a commission to Richard Coote, the Earl of Bellomont, to succeed Colonel Fletcher as governor of the provinces of New York, Massachusetts and New Hampshire, in 1695. Bellomont did not arrive in New York until 1698, and Fletcher continued to exercise the duties of the position until his successor had come. With Bellomont came John Nanfan as lieutenant-governor, who was authorized to exercise all the powers stated in the governor's commission in case of the death or absence of the latter.

By successive enactments of the assembly, these courts were continued in existence until 1698. In that year the act under which the courts had been last renewed expired. Before action could be taken on this matter the assembly was dissolved by Lord

^{29. &}quot;Documents Relative to the Colonial History of the State of New York", by E. B. O'Callaghan, M. D., LL.D., vol. IV, p. 28.

Bellomont. In the following year the assembly met again and passed a bill for the continuation of the courts, but attached to it certain amendments which were obnoxious to the governor. Already controversy concerning the respective rights of the governor and assembly in regard to establishing these courts, had reached a critical point. Bellomont now believed that the amendments which the assembly had made to the previously existing law were put forth as a political move for the purpose of embarrassing him, by compelling him to reject the laws and thereby be responsible for the province being without courts in the future. Promptly he refused his assent to the law, which consequently was null and void, and, without taking further action, the assembly adjourned.

Now the colony was without a judiciary system, and the sit uation was serious. In the royal commissions to all governors of the colony there had been a provision authorizing them to establish courts. This provision was in Bellomont's commission, as it had been in those of his predecessors. In the present emergency the governor appealed to the chief justice, William Smith, and the attorney-general, James Graham, for their opinions as to the course he should pursue. They advised him that the king himself had no such power of establishing courts without the concurrence of parliament, and that consequently he could not delegate to his governors powers which he did not himself pos-But Bellomont, when he found that the opinions of his legal advisors were against his wishes, rejected them upon the ground that he had little confidence in either Smith or Graham, because neither of them were lawyers, notwithstanding the fact that they held judicial and legal offices. He persisted in holding that this power of establishing courts was a prerogative of the king, and therefore was rightfully delegated to his representatives

or governors. Acting upon this assumption, on May 15, 1699, he, with the concurrence of his council, published an ordinance reestablishing the courts as they had existed under the assembly act of 1692 and the subsequent assembly continuations.³⁰

The general state of the law of the province, at the close of the seventeenth century was well defined by William Smith, chief-justice of the supreme court, in a report to Lord Bellomont, written on the twenty-sixth of November, 1700. In that document, Chief Justice Smith said:

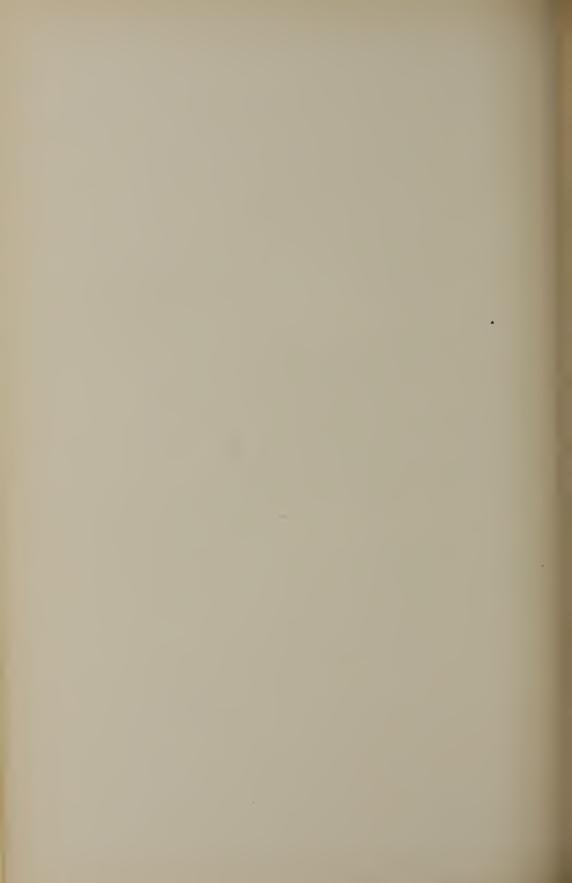
"That the Courts of Law in this province establish'd are the Corporation Courts, who derive their powers from Charters granted from several persons who have heretofore commanded this province. And the provincial courts, which are authorized from an ordinance of Your Excelley and Councill, in virtue of the powers given you by His Majtles letters pattents, under the great Seal of England, and am humbly of the opinion that the coppyes of such Charters and of the Ordinances aforesaid would best manifest to their Excelleies by what rules and methods we are govern'd in all trylls which is the common law of England, and with statutes there made declarative thereof, and near as may be according to the manner and methods of His Majestys Courts at Westminister Hall, except in the Courts of Appeals, which consists of the Governour or Councillor in Chief, and his Majesty's Councill for the time being, and is constituted by His Majestys letters pattents."

This report points out very clearly what English statutes had been recognized by the courts as in force in New York up to that time, for the chief justice refers to them as those statutes declarative of the common law. This, it will be observed, accorded with the rule that, in provinces which England acquired by conquest, general English statutes were binding only when they were in conformance of the common law, and had been made before the conquest.

^{30.} This ordinance is in the appendix of vol. II of the Revised Laws, of 1813, No. 5.

CHAPTER VI

IN THE COLONIAL PERIOD







Caleb Heathcote

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MAIN SHOUL

CALEB HEATHCOTE.

(1665-1721).

Soldier and Jurist; Mayor of New York; Commander in Chief of Colonial Militia; Surveyor General; Judge of Admiralty Court.

CHAPTER VI

IN THE COLONIAL PERIOD

1700-1778

JUDICIAL STATUS OF THE NEW YORK PROVINCE—BEGINNING OF AMERICAN JURISPRUDENCE—DISCUSSION OF THE KING'S PRE-ROGATIVE A PRIME ISSUE OF THE CENTURY—POPULAR AND PROFESSIONAL OPPOSITION TO THE COURT OF CHANCERY AND THE EXCHEQUER COURT—CONTESTS BETWEEN THE ASSEMBLIES AND THE GOVERNORS—CLOSING OF THE COURTS BY THE REV-OLUTION—THE COLONIAL BAR.

Even before the opening of the eighteenth century, the struggle began for freedom in the New York colony,—the struggle which ultimately culminated in the Revolution of 1776. We should be compelled to go back to the time of the Dutch rule in New Amsterdam to find the first germs of what ultimately became an intense popular desire to be free from the dominance of far-distant foreign control. In the time of Kieft and Stuyvesant, as has been pointed out on the preceding pages, there was manifested the same spirit that afterwards found fuller expression during the administrations of the English governors. From the time of Cornbury on, this feeling grew in intensity year by year. It was always latent, ready to exhibit itself upon the slightest provocation. Now and then it broke forth in a most pronounced and positive manner, and occasionally scarcely fell short of actual rebellion.

In the beginning, this struggle was less a popular movement

than an acute rivalry for power between the leaders of the factions which had grown up in the last quarter of the seventeenth century. Generally, the masses had not yet come to concern themselves much with the question, which, when they considered it at all, they must have looked upon as of comparatively little pratical importance. The revolution was not a popular uprising which sought leaders. On the contrary, the movement was one which went from the head downward. Those who led the opposing factions, seeking to gain popular support for their respective views, gradually educated the people to the point of revolutionary protest and action. Appealing to the inherent Anglo-Saxon lover of liberty, the leaders of what became the democratic or popular side, gradually formulated the issue out of which grew the revolution; these were the Morrisses, the Coldens, the Alexanders, and others of that stamp. Against them were arrayed the DeLanceys, and those who were connected with that family in marriage or in social relations.

For half a century, at least, most of this contest centered in the assembly and in and around the courts. In the assembly it took form, on the part of the opposition, principally on two points. First, were the rights and privileges of the legislature in regard to raising revenue, and voting expenditures for the support of the colonial government and for internal affairs generally. Second, though not in any respect second in importance, was the question of the exercise of royal prerogative in establishing courts without legislative authority, particularly the supreme, exchequer and chancery courts. Upon this latter issue, in and out of the assembly, the contention between the people and the representatives of the crown in the persons of the governor and members of his council, was strongly fixed and relentlessly carried on. This matter was constantly before the assem-





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THOMAS JOHNSON.

Jurist, Judge Admiralty Court; Justice Supreme Court, 1691; Member Colonial Council, 1692.

bly; few sessions were held when resolutions and acts were not passed, voicing the opinions of the popular representatives, that the setting up of courts, except by legislation, endangered the liberties of the people. Many of the important cases in the courts during this period were made the opportunity for discussion of the mooted question. In the arena of the courts the protestants against the prerogative of the king never failed to plead the lack of jurisdiction of the governor or of the court appointed by him, and vehemently to declaim against such encroachments upon the rights of the people who were still English citizens living under an English constitution. Thus the history of the higher courts, during this entire period, is in a large and significant sense a political history of the time.

For more than a generation the animosities engendered by the popular uprising in New York City after Andros had fallen from power, upon the accession of King William to the throne in 1689, continued to vex the body politic, to divide families, to set neighbors in opposition to each other, and to be a constant source of trouble to the successive colonial governors. The hanging of Jacob Leisler fanned the embers of political hatred into flames, and the people aligned themselves into two parties—the Leislerians and the anti-Leislerians. For the most part, the Leislerian faction constituted the popular or democratic element, while the anti-Leislerians were the aristocrats, although that line of separation was not clearly marked or rigidly maintained. Generally speaking, however, it was felt that the community was practically thus divided. The governors could not escape the influence of this condition of things. As they followed each other at short intervals, they were seized upon by one or the other of the two parties and manipulated accordingly,—a sort of seesaw game of politics.

Sloughter and Fletcher had been almost completely under the influence of the aristocratic, or anti-Leislerian party. On the contrary, Bellomont, the best governor since Dongan, was preeminently just and impartial. If anything, he was favorable to the Leislerians, although in his actions he was never unfairly committed to them. His death opened the way to a succession of events in this factional quarreling in the community which culminated in another important criminal trial, second—in interest and in the possibility of grave results resulting from it—only to that of Leisler ten years previously. In its finality only did it fall short of the tragedy of the affair of 1691. The defendant in the case was Nicholas Bayard, Leisler's conspicuous opponent, his inveterate enemy, who had done more than any other individual to persuade Governor Sloughter to consent to the hanging of the German captain who had assumed an authority that unfortunately for himself he was unable to maintain.

Immediately after the news had arrived in New York that Lord Cornbury had been appointed to succeed the Earl of Bellomont, the anti-Leislerians in the community were again moved to activity. The personal hatred which possessed Nicholas Bayard and others who had suffered at the hands of Leisler, had not yet been appeased. Bayard especially was still smarting under the recollection of the indignities which had been heaped upon him. In the change of administration he saw his opportunity, and, promptly acting, he had addresses drawn up for signatures to present to the king, to parliament and to Cornbury, in relation to the events in New York of the preceding decade. In the address to his majesty the king he declared "the late differences were not grounded on a regard for his interests, but were the corrupt designs of those who had laid hold of the opportunity to enrich themselves by the spoils of their neighbors." The petition to

parliament set forth that Leisler and his adherents had oppressed and imprisoned people without just cause, had plundered them of their possessions, and had compelled them to flee from the province, notwithstanding they had been well affected to the Prince of Orange. The addresses accused Bellomont of malfeasance in office, pointing out that he had appointed as sheriffs indigent men who, in the discharge of their official duties, had returned to the assembly as members those who were unduly elected. It was also charged that Bellomont had put in his council men who were simply his tools and who had acted in support of his purposes, instead of being faithful servants of the crown. The addresses questioned the authority of the acts of the late assemblies, and in this connection attacked the lieutenant governor and chief justice, charging that the house had bribed them,—the one to pass desired bills, and the other to defend the legality of the assembly proceedings. Alderman Jonathan Hutchins, a tavern keeper, was a conspicuous supporter of Bayard, and actively engaged in the work of securing signatures for these addresses.

Lieutenant Governor John Nanfan, who was in Barbadoes when Bellomont died, returned quickly to New York and assumed the governorship until Lord Cornbury should arrive. Naturally he was incensed at these proceedings, and, in January, 1702, he caused the arrest of Bayard, and locked him up in jail upon the accusation of treason. Alderman Hutchins was ordered to deliver up the addresses which were in his possession, and, upon his refusal to accede to this demand, was also put in jail. In 1691, in the act recognizing King William and Queen Mary, which was passed by the assembly of that year, was a clause, then aimed at the Leisler party, which had been prepared by Nicholas Bayard. It provided that,

"whatsoever person or persons shall, by any manner of ways, or upon any pretence whatsoever, endeavor by force of arms or otherwise to disturb the peace, good and quiet, of their majesties' government, as it is now established, shall be deemed and esteemed rebels, and traitors unto their majesties, and incur the pain, penalties and forfeitures as the laws of England have for such offences, made and provided."

Under this measure, Bayard was brought to trial after he had lain in jail for nearly a month. A commission of over and terminer was issued to William Atwood, chief justice, and Abraham De Peyster and Robert Walters, puisne judges. Attorney General Broughton, who had come over with Atwood, the chief justice, was not at all in sympathy with the proceedings, for he did not consider that any crime had been committed. As he refused to appear. Thomas Weaver, who was collector, and a member of the council, was appointed to be solicitor general to conduct the case. The grand jury which found indictment against Bayard was made up principally of Dutch citizens. Its members were Johannes De Peyster, David Provoost, Martin Clock, Leendert Huggin, Barent Revnders, Johannes Van der Speigell, Johannes Outman, Peter Van Telburgh, Johannes Geisen, Abraham Kettletas, Hendrick Gillisen, Aryen Hoogilant, William Jackson, John Corbett, Johannes Van Cortlandt, Caleb Cooper, John Van Hoorn, Burger Myneers, Gerrit Van Hoorn, Jacobus De Key, Abraham Kipp and Johannes Van Zandt.

No authentic record of the proceedings in this case is in existence. No notes were taken of it except by the solicitor and the counsel for the defendant, and the only knowledge that later generations have had of it has been derived from desultory memoranda made by private individuals who were present at the trial, which were afterward gathered and printed in the petition of Bayard for a redress. Bayard was found guilty of treason as charged in the indictment, and, on March 16, Chief Justice At-

wood sentenced him to be "hanged, drawn and quartered, in accordance with English law." Alderman Hutchins was also condemned and sentenced. Both the accused were successful in securing a reprieve and, on the arrival of Lord Cornbury, who reached New York in May, the proceedings of the court were completely reversed. Lord Cornbury took the side of the aristocratic or anti-Leislerian party, and the condition of affairs, insomuch as it related to these two factions, was again completely reversed. Chief Justice Atwood and Collector Weaver were now fallen into complete disfavor and, fearful of retaliation from those whom they had officially condemned, they fled, first to Virginia and subsequently to England. The end of this affair came in May of the following year, when the general assembly passed an act which was approved by the governor on June 19, 1703, "reversing and making null and void said judgments and all proceedings thereon."1

Nanfan during his short term of office erected a court of exchequer for the province, and also summoned an assembly. Although the assembly approved of the principal measures which the governor advocated, it was not entirely subservient to his inclinations. It availed itself of the opportunity to pass an act declaring opposition to the setting up of a court of equity in the province without the consent of the legislature.

"Captain Garton, reported from the Committee on Grievance to whom the petition of William Hallet, Thomas Hicks, &c., and the petition of Richard Smith were referred, That they had examined and considered the same, and come to a Resolution, which they had directed him to report to the House, and is as followeth, viz.

"Resolved, The setting up of a court of Equity in the Colony, with-

^{1. &}quot;Colonial Laws of New York," vol. I, p. 531; "Journal of the Votes and Proceedings of the General Assembly of the Colony of New York," vol. I, pp. 164-172.

out Consent in General Assembly, is an innovation without any former

Precedent, inconvenient and contrary to the English Law. "Resolved, That the Court of Chancery, as lately created and managed here, was, and is unwarrantable, a great Oppression to the Subject, of pernicious Example and Consequence; That all proceedings, Orders and Decrees, in the same are, and of right ought to be declared null and void, and that a Bill be bro't in according to these two Resolutions."

"To which the House agreed."2

To carry out this resolution, a bill entitled "An Act to declare the illegality, and frustrate the irregular proceedings, Extortions and Decrees, of the late pretended Court of Chancery," was brought into the house and read for the first time on November 25, 1702. It was read for the second time on November 26, and read for the third time and passed on November 27.3

Throughout his administration, Lord Cornbury was completely at odds with the assembly. The opposition to the autocratic rule of the English governors and the claimed prerogative of the crown, especially in relation to the institution of courts, was already strong and continued repeatedly to be expressed. In this the foundation for the contentions of political parties which ultimately led to the Revolution of 1776 was being laid. The governor's frequent denunciations of the actions of the assembly and of the resolutions which were from time to time passed by that body, clearly indicated the difference of opinions between the people and their English rulers, and were significant of the ever-widening breach between the two as touching these matters. Governor Cornbury vigorously objected to the use of the title "general assembly" in bills passed by the legislature, and also objected in no mild words when the assembly

^{2. &}quot;Journal of the Votes and Proceedings of the General Assembly of the Colony of New York," vol. I, p. 150.

^{3. &}quot;Journal of the Votes and Proceedings of the General Assembly of the Colony of New York," vol. I, pp. 156-157.

used the term "rights of the house" in some of its resolutions. Addressing the assembly on this point, he said, "I know of no rights that you have as an assembly, but such as the Queen is pleased to allow you."

On the other hand, the assembly was no less frequent and positive in its assertions of what it considered its rights and the rights of the people. Again and again, resolutions were reported and passed showing the temper of the legislators and specifically declaring their opposition to any encroachments of the crown and its representatives upon their rights. The spirit which provoked the assembly to pass the resolutions of November, 1702, continued to be exhibited upon more than one occasion in the following years, and troubles thickened around Cornbury as his administration continued. Not only was he opposed in matters of theory and principle, but he was in disagreement with both bodies in regard to many practical public affairs, especially as related to his salary and to appropriations for fortifications and administrative measures. In 1708 things had come to such a critical point that the assembly appointed "a committee on grievances", the chairman of which was William Nicolls, who was then speaker of the house. This committee reported a series of resolutions in which various acts of Cornbury's administration were soundly denounced as grievances and contrary to law. And here again the representatives of the people availed themselves of the opportunity to register their opinion in regard to the establishing of courts of equity, one of the resolutions in the series being:

"Resolved: That the erecting of a Court of Equity without consent in General Assembly is contrary to law, without precedent, and of dangerous consequence to the liberty and property of the subjects."

Following closely upon the passage of these resolutions, many 239

petitions condemning Cornbury were drawn up and signed by leading and influential citizens of New York and New Jersey. These were sent to England, and a request was made for the removal of the governor, whose general immorality, both as regards his private life, his maladministration of affairs and his misappropriations of public funds, had long been a public scandal. As a result of these representations, Cornbury was removed in 1708. William Smith, the historian, who lived in the generation after Cornbury and had the personal acquaintance of men who had known the governor well, wrote of him and his character:

"We have never had a governor so universally detested, nor one who so richly deserved the public abhorrence. In spite of his noble descent, his behavior was trifling, mean, and extravagant. * * * Their (the people) indignation was kindled by his despotic rule, savage bigotry, insatiable avarice, and injustice not only to the public but even his private creditors."

Following Cornbury came John, Lord Lovelace and Baron of Hurley, who was appointed to be governor of New York and New Jersey, March 28, 1708. He arrived in New York in December of the same year, but his rule of the province lasted only a few months. He summoned a new assembly which met in April, 1709. Despite his gracious attitude and his considerate words in his opening address to the assembly, the money question, or the question of raising revenue for the support of the administration and the general affairs of the colony, was at once precipitated. In fact, in this respect, the new assembly followed close in the footsteps of those which had preceded it, and its action was likewise followed by the legislative bodies of succeeding years. It was substantially upon this issue that the struggle

^{4. &}quot;History of New York", by William Smith, vol. II, p. 194.

between the people and the crown was maintained for the next three-quarters of a century. As the historian Bancroft has well put it in speaking of this assembly, "the assembly which in April, 1709, met Lord Lovelace, began the contest that was never to cease but with independence." Other historians have commented upon this situation in similar manner, as for example;

"The history of the English continental colonies during the first half of the eighteenth century was largely made up of petty bickerings between the popular assemblies and the royal governors. The principle at stake was important; a fixed salary-grant would have been in the nature of a tax imposed by the crown. The acrimonious contention was greatly disturbing to all material interests, but it served as a most valuable constitutional training-school for the Revolution."

Governor Lovelace died May 6, 1709. His lieutenant governor was Richard Ingoldesby, who assumed control of affairs temporarily, as he had previously done on the death of Governor Sloughter in 1691. His conduct was no more acceptable to the people nor to the English authorities than it had been before, and he was quickly removed, Gerardus Beeckman being placed temporarily at the head of the government in April, 1710. Governor Robert Hunter, appointed to succeed Lovelace, arrived in the colony in July, 1710. His administration of nine years was as conspicuously successful as those of his immediate predecessors had been to the contrary. He has been ranked among the ablest of all the colonial governors of New York, and, with perhaps the exception of Governor Dongan, he accomplished more than any other who had direction of New York colonial affairs.

In 1712, by the advice of his council, Hunter began to exercise the offices of chancellor. In October of that year he appointed Rip Van Dam and Adolph Philipse masters, and also

^{5. &}quot;The Colonies from 1492-1750," by Reuben Thwaites, p. 271.

appointed registers, commissioners and clerks. A proclamation was issued which announced that the court would sit on Thursday of every week. This action of the governor again touched the people upon a sensitive spot, reviving once more the discussion concerning the prerogative of the king in establishing courts. In the assembly the matter was immediately taken up and the strongest opposition to the governor developed. A resolution was passed which, in form and almost in language, was identical with those which had been passed by preceding assemblies on the same subject:

"Resolved, That the creeting of a Court of Chancery without consent in general assembly is contrary to law, without precedent, and of dangerous consequence to the liberty and property of the subjects.

"That the establishing fees, without consent in general assembly is contrary to law."

When these resolutions were brought to the attention of the governor's council, they became the subject of very serious consideration, and a long representation concerning them was transmitted to the lords of trade in London. This brought back a letter to Governor Hunter approving his action in the case, and placing blame upon the assembly, asserting "That her majesty has an undoubted right of appointing such, and so many courts of judicature, in the plantations, as she shall think necessary for the distribution of justice." Thus was the issue sharply defined.

The controversy continued unabated during the administration of Governor William Burnet, the successor of Governor Hunter. Burnet came to New York in 1720. His appointment having been made in April of that year, he arrived in the colony

^{6. &}quot;Journal of the Votes and Proceedings of the General Assembly of the Colony of New York," vol. I.
7. "History of New York," by William Smith, vol. II, p. 220.

in the following September. During the eight years he was at the head of the government, he conducted affairs as wisely perhaps as any man could under the circumstances, but it was not possible for him to escape entirely the influence of the factions with which he was surrounded, and which in a large measure had wrecked the careers of his predecessors. He managed fairly well with the assembly. By associating James Alexander and Cadwallader Colden with himself in his council, and having the benefit of their opinions and advice, he added considerable to his personal power, and was able to handle the assembly more effectively in support of the legislation which he desired. His marriage in 1721 to Mary Van Horne, the eldest daughter of Abraham Van Horne, one of the wealthiest and most influential merchants in New York City, greatly strengthened him both socially and politically. However, he did not concern himself much with the petty politics of the city and colony, his chief aim being to serve faithfully the interests which had been entrusted to him, and to conserve the welfare of the colony as well as might be, under the royal instructions which had been given to him in his commission. Not until toward the close of his administration was there much if any controversy in relation to legal affairs or the constitution of courts. One of his notable traits was his fondness for exercising the office of chancellor. Concerning this, New York's first historian has said:

"The office of chancellor was his delight. He made a tolerable figure in the exercise of it, though he was no lawyer, and had a foible very unsuitable for a judge. I mean his resolving too speedily, for he used to say of himself, 'I act first and think afterwards.'"

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His interest in chancery affairs was one of the causes which

^{8. &}quot;History of New York," by William Smith, vol. I, p. 249.

ultimately led to his removal as governor. One of these related to the French congregation of New York city, which had by that time become large and flourishing. A difference had arisen between the members of the church in regard to the pastorate, and the incumbent of that office, the Reverend Louis Rou, being removed by the consistory, filed a bill in chancery to compel the consistory to reverse its action. When the case came up, the consistory pleaded against the jurisdiction of the court, and this plea was overruled by the governor. The opponents of Mr. Rou, seeing clearly the final outcome of the case in the hands of the governor as chancellor, left the church and became thereafter frank and outspoken enemies of Burnet; among these was Stephen De Lancey, then one of the leading men in the province. Adolph Philipse also had become estranged from the government on account of a suit which he had in chancery in relation to a difference about money matters with a former business partner. In chancery the governor dismissed the bill of Philipse, who thereafter was one of the governor's active opponents.

Thus having arrayed two of the strongest and most influential men of the province against him, Governor Burnet found that, for the rest of his career as a governor, he had a difficult path to pursue. Upon the meeting of the assembly in September, 1725, Adolph Philipse was elected speaker, and Stephen DeLancey was one of the new members. The governor refused to administer the oath to DeLancey, averring that he was not a citizen, but the assembly favored DeLancey and availed itself of the occasion to declare its right to judge of the qualification of its own members, asserting that the governor had no authority in such matters. Thereafter the combined influence of DeLancey and Philipse was brought strongly to bear against the governor,

and all the governor's supporters and most of the members of the assembly supported them in this opposition.

Upon the accession of King George II., the election of a new assembly was ordered, and this met September 30, 1727, remaining in session two months. By this time it was well known that the end of Burnet's administration was approaching, and his opponents had a last thrust at him. After the manner of preceding assemblies, another declaration was made asserting the virtual independence of the legislature. The resolutions passed on the last day of the session showed that the spirit of freedom still controlled the people and their representatives; and they were another move toward full colonial independence. They arraigned the governor in decisive terms, and especially denounced his action in setting up a court of chancery, that rendered

"the Libertys and properties of the Subjects extreamly Precarious, and that by the violent measures taken in & allowed by it some have been ruined, others obliged to abandon the Colony and many restrained in it either by Imprisonment or by excessive bail Exacted from them not to depart."

In the resolutions it was also added that the court should not have been set up without the consent of the assembly, and to emphasize this point the further declaration was made that that body would, at its next sitting, pass an act to make null and void all acts, decrees and proceedings of the court under Burnet. In April, 1728, Burnet was relieved of his charge of the colonies of New York and New Jersey. Transferred to be governor of the Massachusetts Bay province, he left for his new post of duty immediately after the arrival of his successor in New York. Difficulties between himself and the assembly of Massachusetts arose at once, similar to those which had existed between him and the assembly of New York, but they did not long continue

to trouble him, for he died suddenly in Boston, in September, 1729.

John Montgomerie, who succeeded Governor Burnet in 1728, had a short administration of less than four years. He is conspicuous in the history of the New York province, from his identification with the new charter which was granted to New York city in February, 1731, under his name. Other than that his administration was in no wise of marked importance. was diplomatic in his official relations to the people, and to the leaders of the political parties, but was not remarkably energetic. His wisdom, in what was indeed a difficult situation, was shown by the cleverness with which he avoided the particular difficulties which wrecked the public tranquility under his immediate predecessors. Although a meeting of the assembly had been called by Governor Burnet before he had left for Massachusetts, Montgomerie dissolved the assembly before the date for its convening. Thus he escaped being officially drawn into the controversies in that legislative body which were generally quick to be manifested against any governor. As for the court of chancery, he declined to sit in that court, frankly conceding his inability properly to perform the duties of chancellor, although this naturally fell to him as the chief magistrate of the province. He maintained this aloofness until, by a special command from England, he was in emphatical terms enjoined to exercise the duties of the office. Even then, while necessarily obeying the order of the king, he still expressed reluctance that he was forced into this position, contrary to his desires; and thus his attitude in this matter had the tendency for the moment of somewhat quieting the opposition of the people to the court, and as well to the governor as chancellor. In fact, throughout his administration, the court of chancery was the particular aversion of Montgomerie. In it he

never gave a single decree and issued no more than three orders, and even these, both as to form and matter, were first settled by the council. Thus, so far as the issue of the court of chancery and the chancellor was concerned, he managed to keep himself and the subject well in the back ground.

The quietude which prevailed during the administration of Montgomerie did not long continue after his sudden death in July, 1731. The governorship devolved upon Rip Van Dam, who, as the eldest member and president of the council, became acting governor, and this was the beginning of one of the most famous political controversies in the province in that century. Trouble arose over the question of the salary which Van Dam should receive during the thirteen months in which he officiated before the arrival of Governor Cosby. The council, in February, 1732, decreed that President Van Dam was entitled to the entire salary which had been settled on the late governor. When Crosby arrived in August, 1732, he demanded from Van Dam one-half of the salary which had been paid to him during the preceding thirteen months; this was in accordance with an order of the council in England. Van Dam was willing to accede to this demand provided Cosby would pay him one-half of the emoluments or fees which he had taken as governor during the same period, and before he had arrived in the colony-emoluments or fees that were for pretended services and expenses.

Cosby determined to prosecute Van Dam, and, on the other hand, Van Dam proposed to sue the governor. It was genererally considered in the province that the governor was entirely in the wrong in the matter, but that had no effect upon Cosby. He decided to erect a chancery court to try the case, and by this action the people were again stirred up to opposition to an equity court ruled by the governor. Not only had the establishing

of the equity court become a matter peculiarly obnoxious to the people, but in this case it was even beyond the limit of ordinary prudence for the governor to sit as chancellor in a case to which he was one of the parties in controversy. Accordingly, he appointed Stephen DeLancey, Adolph Philipse and Chief Justice Lewis Morris, to act as equity judges. DeLancey and Philipse were in full sympathy with Cosby in his aims and methods, but Chief Justice Morris was as strongly opposed. The trial which followed was not only one of supreme importance in formulating and establishing the rights of the people in regard to this court jurisdiction, but it became a conspicuous mile-stone in the progress of the province toward freedom. The people, having little sympathy with the aristocratic element that supported the governor, protested against this renewed attack upon their liberties. They recalled the time of Leisler and Milbourne, and the Dutch resented the arraignment of Van Dam. He was a Dutchman, besides being one of the most respected members of the community, and his fellow Dutchmen espoused his cause as their own, looking upon him as being particularly their representative.

William Smith, one of the most talented lawyers of the period, and James Alexander, scarcely second to Smith in legal ability, and also a member of the governor's council, defended Van Dam. The substance of their defense was a denial of the authority of the royal council to legislate for New York, and an appeal for independence. Without hearing the opposing counsel, Chief Justice Morris delivered a decision in favor of the plea of Van Dam, holding that the governor had no power to create an equity court. The associate justices, DeLancey and Philipse, gave opposing opinions defending the governor and overruling the chief justice. But no final decision was ever reached in this case, and the court of exchequer, as constituted by Cosby, never met





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JAMES ALEXANDER.

(1690-1756).

Attorney General, 1721: Member of Colonial Council, 1721-37 and 1750-56; one of the counsel who defended the freedom of the press in the person of John Peter Zenger, in 1735.

again. Public opinion had set in so strongly against it, that any further attempts to maintain it in any form were for the time abandoned.

Governor Cosby was incensed over his failure to coerce the ourt in this case. He denounced both Smith and Alexander, and afterward, in 1732, he wrote to the lords of trade declaring Alexander to be "unfit to sit in the council" and of "known very bad character." He selected Chief Justice Morris as the special subject of his resentment and abuse, and after heckling him in regard to his decision in the case, and practically imputing to him bad faith and lack of honor, he removed him from office, and promoted James DeLancey to the position thus arbitrarily made vacant. Thus he added fuel to the flames already started, and succeeded in making a sharply defined issue in which Chief Justice Morris was naturally the conspicuous exponent of popular rights, and DeLancey and his associates the supporters of the governor. The alignment of political factions which was then made, practically continued for the next forty years; the Morrises and their supporters being the Whigs of the period and the DeLanceys and their associates the Tories, until after the breaking out of the Revolution.

In April, 1734, a new assembly was convened by Governor Cosby. While the general disposition of the members of this assembly was to be conciliatory to the governor in small matters, there still existed the strongest opposition to any important measures which seemed to tend toward encroaching upon the freedom of the people. The assembly was even more strongly determined than its predecessors against a court of exchequer. Early in the session a bill for settling fees and bills was up for consideration before the house, and, in connection therewith, various petitions from New York, Westchester, Queens and other counties had

been received, principally concerning the courts of justice. In May the house took the extraordinary course of inviting James Murray and William Smith, then the principal lawyers of the opposing parties, to address the house upon the subject of the right of the assembly to legislate regarding the courts. On June 7, the day fixed for the hearing, the two lawyers appeared. Historians point out as worthy of note and significant of the attitude of the members of the assembly, that they appeared in the capacity of assistants to the legislature, and not as counsel for the petitioners. Smith spoke for three days and Murray for five days. Smith argued in essence that no legislation could be enacted in the colony by the act of the crown, but only by act of the legislature. He said in conclusion:

"Tis the misery of an arbitrary government that a man can enjoy nothing under it that he can call his own. Life, liberty and property are not his, but all at the will and disposal of his tyrannical owner. * * * If an arbitrary power over our liberties and properties be let in upon us, but at the back door, it will certainly drive many of us out of our habitations, and 'tis feared, will once more reduce our country to a wilderness, and a land without inhabitants."

Murray argued that the four great courts of chancery,—king's bench, common pleas, and exchequer,—were of original jurisdiction by the constitution of England, and were founded on immemorial usage. He held that if the colony, as an English province, was entitled to like courts as essential branches of English liberty, the establishment of them by a new law through act of assembly would raise doubts as to the people's title to enjoy rights and privileges as Englishmen. He contended that the colony was entitled to these courts, as they were entitled to other liberties, without acts of the legislature. In conclusion, he advised

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^{9. &}quot;History of the Province of New York," by William Smith, vol. I, p. 372.

that if new laws were passed they should be in "imitation of such laws, relating to those courts as the wise legislatives of England have thought fit to make."

"It did not follow from his (Smith's) authorities, as some imagine, that no court could be opened and organized in the colony without the aid of the legislature; nor would the passing of an act for that purpose, in the least degree shake our titles, as Mr. Murray asserted, to any other rights and privileges to which we are entitled by the common laws of England. Neither of these gentlemen, had the question been proposed by the house, would have denied that the colony was entitled, for instance, to a court of king's bench, nor that the law constituting the judges of it, sufficient for their exercise of all the powers of the court of king's bench at Westminster, and so respecting either of the other courts. Mr. Smith's law authority did not militate against such a court because it would not be creating a new court; and if the crown had exceeded its authority in modelling it, by an ordinance or commission, though that act may be void, the right to such court would still exist, because it is not in the power of the crown to repeal an old law, and extinguish the rights and privileges of the subjects."10

Further progress in the march toward ultimate freedom was conspicuously marked during Governor Cosby's administration by the Zenger case. In this the freedom of the press was the vital issue. The leaders of the opposition to the governor, which by this time had grown to include nearly all the strong legal intellects of the day, as Morris, Alexander, Smith, Colden and the Livingstons, had little opportunity to make their complaints, or to promulgate and discuss before the public the issues to which they stood committed. Only occasionally was there a meeting of the assembly, and rarely were elections held, while the courts were completely controlled by the governor, and free speech there rigorously restrained. In this emergency they fell back upon the power of the press, and, to voice their opinions, they utilized

^{10. &}quot;History of the Province of New York," by William Smith, vol. II, p. 18.

Zenger's Weekly Journal, in the columns of which they demanded freedom of thought and speech as the birthright of every free people. From a literary point of view the Journal was not an imposing production, but many of its articles contributed by the leaders of radical thought of that day were productions of more than ordinary character. The constant theme of the writers was freedom, emancipation from the exactions of despotism and autocratic government, and the liberty of the press. It was not long before the governor and the aristocratic party led by DeLancey became exasperated over the persistent aggressiveness of the Journal in its new phase, and in September, 1734, this animosity finally culminated in a movement to crush it and its supporters. DeLancey, going before the grand jury, charged that the paper was of treasonable character, and demanded the indictment of its editor, but the jury refused to obey that mandate. An appeal which the governor made to the assembly met with no more favorable response. Later, however, at the behest of DeLancey, the grand jury yielded so far as to present that Zenger was guilty of having published scandalous songs concerning the recent elections of magistrates in the city; thereupon the governor's council, on November 2, 1734, declared these papers to be libelous and seditious and directed, in an official order, that they should be burned:

"Whereas, by an order of this board of this day some of John Peter Zenger's Journals entitled "The New York Weekly Journal" containing the freshest advices, foreign and domestic", Nos. 7, 47, 48, 49, were ordered to be burnt by the hands of the common hangman or whipped near the pillory in this city, on Wednesday, the 6th instant, between the hours of eleven and twelve in the forenoon, as containing in them many things tending to sedition, and faction, to bring his majesty's government into contempt, and to disturb the peace thereof; and containing in them, likewise, not only reflections upon his excellency the governor in particular, and the legislature in general, but also upon the most considerable persons

in the most distinguished stations in this province. It is therefore ordered, that the mayor and magistrates of this city attend at the burning of the several papers of journals aforesaid, numbered as above mentioned."

The aldermen denying the right of the governor and council to control their conduct, refused to obey this order, and not even the hangmen of the city would burn the papers; finally, the sheriff had this done by one of his negroes. Immediately thereafter Zenger was arrested and held in confinement for trial on information filed against him for libel by the attorney general. He remained in prison until January 28, 1735, and then was arraigned on a new charge, in this instance being represented by James Alexander and William Smith. The defendant's counsel filed exceptions raising the question of the validity of the appointment of DeLancey and Philipse as judges. First they objected to the tenure of office by the judges, which, having been made by the governor according to "will and pleasure" instead of "during good behavior," was contrary to the statutes of King William III. They also objected to the investure of the same persons with the authority of the court of common pleas, and in conclusion they objected to the form of the proceedings in constituting the court as not warranted by the common or statute law, or by any other act of the colony, and also to the lack of evidence that the council had concurred on the appointments. These arguments naturally excited the ire of the chief justice and his associates, and the presiding officers denounced the two lawyers in no moderate terms. DeLancey from the bench declared his opinion that the counsel had thought to gain a great deal of applause and popularity by opposing the court, as they did the court of exchequer, but that they had brought it to the point that either the justices must go from the bench or the lawyers from the bar. Then he disbarred them with the order that "for the said contempt the said James Alexander and William

Smith be excluded from further practice in this court, and that their names be struck out of the roll of the attorneys of this court."

Thus left without counsel, Zenger seemed helpless. On the day of trial, DeLancey and Philipse sat upon the bench, and there was every indication that the government would make short work of the case. But Andrew Hamilton, the eminent lawyer of Philadelphia, had been quietly engaged by the friends of Zenger to defend him, and on this day he appeared in court. Hamilton's defense has become historic. As it is well known, he admitted the publication, and placed the justification of the defense solely upon the truth of the libel. Chief Justice DeLancey maintained that in the eye of the law the truth of the libel made no difference, and in the discussion that followed between the chief justice and the attorney, the chief justice finally refused to listen. Hamilton without hesitation turned to the jury, declaring, "to you we must now appeal for witnesses of the facts we have offered and are denied the liberty to prove: you are to be the judges of the law and the facts." He then continued that remarkable speech which has peculiar authoritativeness as the first clear and decided expression ever made in America of the principles of free speech and free thought. He pointed out the danger to any people from unlicensed power, and declared that the oppressed should always have the right of complaint and should not be silenced by evil governors. He closed his speech with this touching and powerful peroration:

"I am truly unequal to such an undertaking (the defense of freedom) on many accounts, and you see I labor under the weight of many years and am borne down with great infirmities of body; yet old and weak as I am, I should think it my duty, if required, to go to the utmost part of the land where my services could be of use in assisting to quench the flame of prosecution set on foot by the government to deprive a people of the rights

of remonstrating and complaining too of the arbitrary attempts of men in power. But to conclude: the question before the court and you, gentlemen of the jury, is not of small nor private concern; it is not the cause of a poor printer; nor of New York alone, which you are now trying. No! It may in its consequence affect every freeman who lives under a British government on the main of America. It is the best cause, it is the cause of liberty! And I make no doubt but your upright conduct to-day will not only entitle you to the love and esteem of your fellow-citizens; but every one who prefers freedom to slavery will bless and honor you as men who have baffled the attempts of tyranny and, by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity, and our neighbors that to which nature and the laws of our country have given us a right—the liberty both of exposing and opposing arbitrary power, in these parts of the world at least, by speaking and writing the truth."

Although the attorney general demanded the conviction of the defendant, and the chief justice charged the jury that they must convict him, a verdict of not guilty was brought in. With the declaration of this verdict the principle of the freedom of the press in America was forever established. The little community in which this great contest was waged did not fail to appreciate the importance of the result. Those in the court room broke into loud cheers of resounding applause, and not even the threats of the judges could restrain the tumult. Hamilton was the hero of the hour, and when, on the next day, he started on his return to his home in Philadelphia, the entire city turned out to do him honor, his departure being accompanied by the cheers of the crowd and the salute of cannon. It has been well said that in this case and decision was "the germ of American freedom-the morning star of that liberty which subsequently revolutionized America." The trial and the events connected therewith throw a strong light upon the state of the province at that time, the feeling of the people in regard to the dangers which seemed to threaten their liberties, and the opposition to the government which England was endeavoring to fasten upon them.

affair was not alone illustrative of the situation as it then was, and of the prevailing opinion concerning Cosby and his judges, and an exhibition of the character and talent of Andrew Hamilton. It was all that, but more than anything else, it forever fixed the principles which controlled the public mind and directed the public conduct for the next forty years until the struggle for freedom culminated in the Revolution of 1776.¹¹

Cosby continued as governor for only a few months longer. His power and influence with the people were practically at an end, and, although he played the part of tyrant to the last, it was impossible for him to accomplish much evil. He died in March, 1736, and was succeeded by his friend and counsellor, George Clark, who, like other governors who had preceded him, was little more than an impoverished adventurer. Clark held office for seven years until 1743, and his rule was in no wise conspicuous for anything save the steady rise of the popular party to power. Although he had powerful friends at court, he was not himself a strong man and could make little progress in the face of opposition. Political disputes waxed stronger and stronger, and the assembly was more and more insistent upon the recognition of its privileges and particularly its rights to the legislative control of colonial affairs.

One remarkable affair distinguished this period, involving the highest court in the province, and it has always remained one of the darkest blots upon the history of jurisprudence in New York City. This was the so-called negro plot of 1741 and 1742. The story of this affair has often been told, and it is simply another example of the power of prejudice and superstition to con-

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II. For a contemporaneous account of this case see "A Brief Narrative of the Case and Trial of John Peter Zenger for Libel"; reprinted by John Holt at the Exchange, 1770. It is not known that Zenger's original account was preserved except in this reprint.

trol the minds of the community and to carry that community to irrational extremes. The freedom of New Amsterdam from the witchcraft superstition has already been referred to in preceding pages. It was left, however, for a later generation to fall victim to a worse superstition and become panic stricken and inhuman.

In February, 1741, several small robberies were traced to one John Hughson, who kept a tavern which was a resort of negro slaves and other disreputable characters. Hughson confessed to having received stolen goods, and was held for trial. In the following month an epidemic of fires broke out in the city; these caused a general panic among citizens of all classes, and suspicion arose that the negroes had conspired in a secret plot to burn the city in revenge because they had been apprehended in connection with the robberies. At the same time some Spanish negroes came in on a vessel, and the panic gradually developed into a full belief that all the colored people were on the point of uprising and killing their white masters for the purpose of establishing a negro republic. Mary Burton, a servant of John Hughson, and Peggy Solinburgh, or Peggy Carey, a woman of dissolute character who lived in Hughson's place, became the principal witnesses against Hughson, members of his family and the negroes. Arrests were promiscuously made until the jails were crowded with thieves, receivers, slaves, prostitutes, and other individuals of the criminal class. Rewards of money and pardon to any who would confess were freely offered by the authorities, and this movement, though well-intended, had the result of stimulating the imaginations of Mary Burton and Peggy Carey to renew their efforts in giving evidence against those who had been arrested.

Before the supreme court on April 2, 1741, many of the accused were brought to trial, and with glib tongues the witnesses

testified to their knowledge that there was a negro conspiracy in which plans had been laid to make a certain negro the governor and John Hughson king, and to seize upon the property of the whites for the purpose of dividing it. Hughson and his wife and Peggy Carey were tried and found guilty of robbery, and then Peggy, in an endeavor to save herself from punishment, began another series of confessions of conspiracy and midnight incantations, and so on. The negroes commenced confessing one against the other, and, finally, one John Ury, or Jury, a former Roman Catholic priest, who had been a teacher in Philadelphia and New York from the time of his arrival in the country in 1738, was arraigned.

The astounding way in which the conviction of the truth of this conspiracy, absurd as it appears on the face, held the community, is shown by its having possessed the minds of so many of the best people of the time. On the grand jury which brought in indictments were such men as James Livingston, Hermann Rutgers, Peter Rutgers, Jacobus Roosevelt, Stephen Van Cortlandt, John Provoost, Abraham De Peyster, Peter Schuyler, Peter Jay and others of not less prominence. On the jury which tried and convicted John Ury were such men as Gerardus Beeckman, Sidney Breese, Peter Furman, Thomas Willett, Brandt Schuyler and others of like social and business standing. Hughson and his wife, Peggy Carey and John Ury, were hanged, the bodies of Hughson and one negro being afterwards hung in gibbet. Thirteen negroes were burned at the stake, eighteen were hanged, and seventy were transported. So much impressed was the community with its escape from the dire calamity which it was believed overhung it, that a day of thanksgiving on September 24 was ordained and generally observed.

Daniel Horsmanden, then recorder of the city of New York

and afterwards chief justice of the supreme court, was one of the judges who sat in trying these cases. He firmly believed in the plot, and wrote and had published an account of it which has the character of a special plea in defense of his actions and that of his associates on the bench. A perusal of this account will show to what an extent this public insanity possessed even the strongest and most judicial minds of the period. Its title page alone clearly reflects the spirit of the moment, and is well worth reading as one of the uniquely interesting printed pages of that period. It was printed in 1744, by James Parker, and is one of the most valued documents relating to the colonial period of New York City.

During the last three decades of this period, the governors succeeded each other rapidly, and had short tenure of office. In 1743 Admiral George Clinton came out to succeed Governor Clark, who returned to England. His administration, which comprised ten years, was particularly distinguished by a constant struggle between the executive and the assembly. By this time the province had entered upon a great constitutional revolution, and the assembly had risen to a position of decided influence and power. As has already been pointed out, the party views between the factions represented on the one side by William Morris, William Smith, James Alexander, Cadwallader Colden and others, and on the other by James DeLancey and his adherents, still continued to be matters of inciting controversy. At the outset, Governor Clinton attached the DeLancey element to him, and was largely controlled by the chief justice. Later on, however, he had a falling out with Chief Justice DeLancey, and denounced him and his party in no measured terms, as will appear by one of his communications to the lords of trade:

"I must inform your Lordships that the chief strength this faction 259

has gained proceeded from, I must confess, an imprudent act of my own in giving Mr. DeLancey commission to be Chief Justice of this Province during his good behavior; this has given him the greatest influence, as no man can think himself safe from his power when the ambition, the violence, and the obstinacy of his temper is well known. A governour they expect can remain with them but a few years, but the power of this Man they think is entailed upon them; whatever reason there may be for making the Judges' Commissions in England, in this manner, the same reason may not extend to the plantations, tho' I was made to believe that they did; but the inconveniences which may arise from it may be incomparably great, as it is possible that a Chief Justice in England can not obtain such influence over the Nation as a Chief Justice may over this Province, where the number of Men of Knowledge is very inconsiderable, and by uniting with the men of politics, power and wealth make it impossible to find anyone to accuse, try or convict him. * * * The Chief Justice soon convinced me of my error, for before that commission was granted, he on all occasions, shewed himself ready to assist me with his advice and with what influence he had, in order to make my administration easy to me, and which I have now reasons to believe he only did thereby to induce me to grant this Commission, by which he expects to secure to himself that Power which from his natural ambition he has always aimed at, for as soon as he had obtained it, he put himself at the head of the Faction, whose views were to distress me in the administration and thereby to compel me in effect to put it into their hands, and on this occasion I must remark * * * that the uneasiness and distraction in government affairs in Mr. Cosby's administration arose from Mr. DeLancey's ambition to be Chief Justice and that ever since he has been in power continual schemes have been formed to weaken the authority and power of every governor in the administration and to alter the Constitution of his Government as will appear from an attentive consideration of the acts of the general Assembly in Mr. Clark's administration and since my arrival."12

Afterward Governor Clinton put his trust in Cadwallader Colden, whose political star was just then arising, and during the latter part of his administration he was almost constantly in warfare with the DeLancey element, in and out of the assembly. Colden had become a member of the council, and Clinton was planning to make the former Pennsylvania doctor the lieutenant-

^{12. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. VI, pp. 356-357.

governor of the province in place of DeLancey, and thus to be his successor as governor when he should return to England. In this he was not successful, for the lords of trade in London had been influenced by DeLancey and stood by that official. Intensely mortified by his defeat in playing politics, Governor Clinton retired in 1753. He was succeeded by Sir Danvers Osborn, who arrived in New York, October 10, 1753, but had no opportunity to influence provincial affairs, for he committed suicide two days after his arrival.

James DeLancey, the lieutenant governor, attained another height in his ambition and became acting governor pending the arrival of Sir Charles Hardy in 1755. During these two years the same questions of legal jurisdiction that had been raised between the assembly and former governors, still continued to be the perplexing subject of discussion and contention. Lancey hesitated in relation to the chancellorship, and it was several months after he had been inducted into office before he took the oath as chancellor. In the following year he held a court of errors, and William Smith made the point against his opponent that on account of the incompatibility between his old position as chief justice and his new judicial office, his right to the former naturally became extinct. This was not DeLancey's point of view, however, for later on, after his successor had arrived, he resumed his place on the bench as chief justice and also continued as lieutenant governor. His contention in this matter was supported by the lords of trade, and the governor upheld him. William Smith, the historian, has left an interesting account of the proceedings in a case which was brought before Sir Charles Hardy, in which the governor confessed his inability to officiate as chancellor, and admitted his dependence upon DeLancey.

When Sir Charles Hardy accepted a naval command in 1757, the governorship devolved again upon DeLancey, who this time had control of affairs until his death in 1760; then Cadwalader Colden became lieutenant governor, and held office until Governor Robert Monckton arrived in 1761. The succeeding fifteen years under the governorships of Monckton, Sir Henry Moore, the Earl of Dunmore and William Tryon, were marked by a continued growth of the feeling for independence and of resentment of the province over the arbitrary measures imposed upon it by England and the king's representatives who were sent to govern. At this time, the acts of New York assembly, together with such statutes of England as pertained expressly to the province, and certain other English acts passed before a general assembly had been permitted in New York, practically constituted the law of the province. An important question which was constantly coming before the courts was as to what English statutes should be considered in force in the province. Upon this point William Smith, said that

"the state of our laws opens a door to much controversy. The uncertainty with respect to them renders property precarious, and greatly exposes us to the arbitrary decisions of bad judges. The common law of England is generally received, together with such statutes as were enacted before we had a legislature of our own. But our courts exercise a sovereign authority in determining what parts of the common and statute law ought to be extended. * * * In many instances they have also extended, as I have elsewhere observed, even acts of parliament passed since we have had a distinct legislature, which is adding greatly to our confusion."

New York lawyers who were in practice for the quarter of a century or more before the Declaration of Independence, were men who, whether we consider their learning in the law, their

^{13. &}quot;History of the Province of New York," by William Smith, vol. I, p. 309.

skill in forensic contests, or their liberal views and enlightened patriotism in matters of public concern, were the equals of the members of any colonial bar, and worthy to be associated in history with their best known immediate successors—John Jay, James Duane, Gouverneur Morris, Robert R. Livingston, Jr., Egbert Benson, Peter Van Schaack and others of less eminence. As a body they had a very remarkable influence in shaping the popular opinion which gradually developed in opposition to the increasing arbitrary action of the British king and parliament. None more keenly appreciated this condition of affairs and the outlook for the future than the king's officers and advisers. Writing to the Earl of Halifax, February 22, 1765, Lieutenant Governor Colden deprecated the growing power of the lawyers:

"The dangerous influence, which the Profession of the Law has obtained in this Province, more than in any other part of his Majesty's Dominions, is a principal cause of disputing appeals to the King, but as that influence likewise extends to every part of the Administration, I humbly conceive that it is become a matter of State which may deserve Your Lordship's particular attention.

"After Mr. DeLancey had, by cajoling Mr. Clinton, received the Commission of Chief Justice during good behaviour, the Profession of the Law entered into an Association the effects of which I believe Your Lordship had formerly opportunity of observing some striking instances. They proposed nothing less to themselves than to obtain the direction of all the measures of Government, by makeing themselves absolutely necessary to every Governor in assisting him when he complied with their measures and by distressing him when he did otherwise. For this purpose every method was taken to aggrandise the power of the Assembly, where the profession of the law must always have great influence over the members & to lessen the Authority & Influence of the Governor. In a Country like this where few men, except in the profession of the law, have any kind of literature, where the most opulent families, in our own memory, have arisen from the lowest ranks of the people, such an association must have more influence than can be easily imagined. By means of their profession they become generally acquainted with men's private affairs & necessities, every man who knows their influence in the Courts of Justice is desirous of their favor & affrayed of their resentment. Their power is greatly strengthened

by enlarging the powers of the popular side of government & by depreciating the powers of the Crown.

"The Proprietors of the great tracts of Land in this Province have united strongly with the lawyers, as the surest support of their enormous & iniquitous claims & thereby this faction is become the more formidable and dangerous to good Government. Mr Prat, who had no family or private connections in this Province, while he was Chief Justice, discovered the dangerous influence of this faction in the Administration of Justice, as well as otherwise and resolved with the assistance of the Government to have crushed it; but he was prevented by death. Many who have either felt or perceived the bad effects of the domination of lawyers lament the loss of such a judge.

"All Associations are dangerous to good Government, more so in distant dominions, & Associations of lawyers the most dangerous of any next to military.

"Were the people freed from the dread of this Domination of the Lawyers I flatter myself with giveing general joy to the People of this Province. I never received the least opposition in my administration except when I opposed the views of this faction. I am confident their views may be entirely defeated by the means I humbly proposed in my praceeding letter, with the concurrent assistance of his Majesty's Ministers when it becomes necessary."

The early lawyers of this century, beginning indeed in 1697, before the century really started, and coming down to the prerevolutionary period, were: David Jamison, James Emott,
Thomas Weaver, John Bridges, Robert Milwood, May Bickley,
Jacob Regnier, Roger Mompesson, Tobias Boel, Joseph Murray,
John Chambers. Abraham Lodge, Richard Nicolls, James Alexander, William Smith, Daniel Horsmanden, Lancaster Green,
Elisha Parker, John Burnet, Samuel Clowes, William Searle,
John McEvers, Jr., John Van Cortlandt, John Alsop, Augustus
Van Cortlandt, Lambert Moore, Whitehead Hicks, Benjamin
Kissam, Benjamin Helme, Rudolphus Ritzema, Philip Livingston, Jr., Richard Harrison, Thomas Jones, Philip J. Livingston,

^{14. &}quot;Documents Relative to the Colonial History of the State of New York", by E. B. O'Callaghan, M. D., LL.D., vol. VII, p. 705.

John William Smith, John D. Crimshire, David Matthews, Samuel Jones, John Jay, John Morin Scott and Peter Van Schaack.

With the breaking out of the Revolution, the courts in New York city came to an end. While Washington occupied the city in the earlier months of 1776, he interferred in no way with the local magistrates. General Howe, upon taking the city in September of that year, shut up the civil courts, and everywhere within the British lines-that is, Long Island, Staten Island, Manhattan Island, and in a good part of Westchester—the inhabitants were deprived of all court protection or redress. A condition of anarchy sprang up, and in their distress upward of a thousand persons within the British lines signed a petition addressed to Lord Howe, October 16, 1776, praying that he would "Restore this City & County to his Majesty's Protection and Peace," that is, would re-establish civil power in the place of military rule. Among the signers of this petition were Chief Justice Horsmanden, Justices Ludlow and Hicks, and such leading lawyers as Samuel Jones, John Tabor Kempe and Benjamin Kissam, all of the Episcopal and some of the other clergy, and several leading merchants. But General Howe did not deign to answer the petition.

Outside the British lines little serious attempt was made to remedy the inconvenience occasioned by a lack of courts of justice. As the authority of the royal government declined, disorders increased. Many of the local judges and other civil officers were loyalists, and the patriots either ignored or openly opposed any attempts that they made to execute the duties of their offices. On the other hand, those who were known to be on the patriot side were generally recognized and obeyed. Old forms of process for the recovery of debts and the punishment of crimes were

continued, and in some of the counties measures were taken to fix local and temporary regulations.

In 1780, when General Robertson came to succeed General Tryon as civil governor, "Courts of Police" were established, and a pretense was made of re-establishing the supreme court. Chief Justice Horsmanden and Justice Hicks were dead, leaving Justices Ludlow and Jones, who had adhered to the royalist cause. But these were both passed over, and the younger William Smith, afterward the first historian of the province, was elevated to the position of chief justice, at a salary of £500 sterling. He was appointed, says Judge Jones, "at a time when no law but Military and Police law existed, when not a Court of Justice under the jurisdiction of Britain was open, and when there was no more occasion for a chief justice than there was for a Bishop or a Pope." He has never been recognized as a member of the provincial supreme court, for the reason that he was appointed after the Declaration of Independence.

CHAPTER VII

THE ENGLISH COLONIAL COURTS



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THE ENGLISH COLONIAL COURTS

1665-1777

GOVERNOR NICOLLS' COURT OF ASSIZE—AN EARLY WITCHCRAFT TRIAL—INSTITUTION OF THE SUPREME COURT AND ITS NOTABLE HISTORY—DISTINGUISHED JUSTICES OF THE PERIOD—THE COURT OF OYER AND TERMINER—THE COURT OF CHANCERY AND THE EXCHEQUER COURT—DIVORCE JURISDICTION—COURT OF PROBATE SUCCEEDS THE ORPHAN MASTERS COURT OF THE DUTCH PERIOD—THE SESSIONS AND THE TOWN COURTS—ATTORNEY GENERALS, SURROGATES, AND OTHER COURT OFFICERS.

One of the first acts of Governor Richard Nicolls after he had politely turned out Stuyvesant, made over New Amsterdam into New York and established English rule, was to create a general court of assize, to be the supreme judicial tribunal of the colony. Under the Dutch, as we have already seen, the highest judicial offices were exercised by the director general and his council, and it was as a substitute for this that Nicolls ordained the court of assize. Some authorities have held that this court was an entirely new idea of the English, and that also it had its origin in the Duke's Laws. Neither of these views is correct. In the Duke's Laws there was no clause creating this court, but simply a clause fixing its sessions. As a matter of fact, the establishing of the Duke's Laws and the creating the court of assize, both by act of Governor Nicolls, were practically con-

^{1. &}quot;History of the Province of New York," by William Smith, pp. 36 and 45.

temporaneous, and they were independent. In creating this court Nicolls simply followed the Dutch, changing the name rather than the form of a tribunal which had long existed in New Netherland. On this point, the English historian George Chalmers has said:

"Prudently copying what had been already established by the Dutch, he erected a court of Assizes, composed of the governor, the council, the justices of the peace; which was invested with every power in the colony, legislative, executive and judicial.2

"Having adopted with commendable policy the prior customs of the Dutch, he continued the court of Assizes, which, composed of the governor and council and the justices of the peace, was invested with legislative, judicial and executive power."

This court of assize was a court of equity as well as of common law, with both original and appellate jurisdiction, having original jurisdiction of all criminal prosecutions and in all civil cases in which the action might be to recover above £20, and being the final court of appeals except to the crown. It was composed of the governor and his council, and two justices of the peace from each of the several precincts or ridings where courts of sessions were held. This addition of the justices to make up the bench was a distinct change from the Dutch practice, where the highest tribunal was composed alone of the director general and his councillors. By virtue of their offices as justices of the peace, the mayor, recorder, and the aldermen of New York, sat in the sessions of the court. It does not appear, however, that the justices who resided at a distance were in the general habit of attending. Probably their attendance was optional, or perhaps subject to the summons of the governor. The jurisdiction of the

^{2. &}quot;Political Annals of the Present United Colonies", by George

Chalmers, London, 1780, vol. I, p. 575.
3. "An Introduction to the History of the Revolt of the Colonies," by George Chalmers, London 1782, vol. I, p. 110; Ibid, Boston 1845, vol. I, p. 117.

court was co-extensive with the duke of York's possessions, which included Pemaquid in Maine, Martha's Vineyard and Nantucket in Massachusetts, Fisher's and Gardner's Island and several towns in Connecticut, Delaware and New Jersey, and New York as far north as Schenectady.

In addition to its purely judicial functions, the court was invested with the "supreme power of making, altering and abolishing any laws." It was, however, in no respect an advance towards democracy, nor in any popular sense was it a legislative body, although it exercised legislative powers. It was altogether devoid of representative character so far as the people were concerned, thus conspicuously differing from the popular assemblies that were summoned under the Dutch governors; its members being entirely dependent upon the will of the governor, naturally were expected to conform to his wishes, in all their deliberations. In addition to other functions, it became a vehicle to promulgate, and record the ordinances issued by the duke of York in England and his deputy and councillors in New York.

Methods of procedure for this court were laid down in a section of the Duke's laws. Sessions were ordered to be held once a year in New York. Whenever, on the information of an aggrieved person, the governor was satisfied of the necessity of having justice done before the next annual meeting of the court, he issued a warrant for a special session to try the case; or, on an information exhibited to him of a public offense, like a violation of the navigation laws, or a capital crime certified to him by the court of sessions, he issued a commission generally addressed to the mayor and aldermen for a court of oyer and terminer to try the offender, where more than two months would elapse before the next session of the court of assize.

The method of procedure in this court has been well sum-

marized by Judge Adolph J. Rodenbeck, of the court of claims, and from his manuscript the following digest has been made.⁴

Causes were tried by a jury, at first consisting of six, but later of twelve members, and this feature was not confined to original cases, but was extended to matters coming on appeal from the lower court, in cases where new evidence was taken. No justice of the peace who had voted in the inferior court in a case appealed to the assize had a vote on the appeal, and in all cases of appeal the court was required to judge the case according to former evidence and no other, unless some material witness was not in the country at the time of the trial in the lower court, or was necessarily hindered from giving evidence thereat, and where matters of fact were found to agree with the lower court and the judgment was according to law, not to revoke the judgment or sentence appealed from, but to abate or increase it as should be judged right. Appellants were required to submit security for the prosecution of the appeal and for payment of damages to the respondent in case the judgment was sustained. All appeals were made by petition, and the appellant was required to file with the clerk of the court from which the appeal was taken, six days before the beginning of the assize, a brief statement of the grounds upon which he appealed. This statement was transmitted to the appellate court and a copy was furnished to the respondent. If, as the Duke's Laws quaintly phrase it, there was "a dubiousness in the expression of the law," an appeal would lie to the assize from the sessions.

Concerning this judicial-legislative body one of New York's historians has said:

^{4. &}quot;History of Statute Law (Ms.). Period from West India Company, 1609 up to the establishment of the Provincial Government, 1770," by Adolph J. Rodenbeck.

"The governor and his council remained the real lawmakers as well as the interpreters of the laws they made. Before long, it is true, the court of assize deliberated with closed doors upon the general concerns of the province and made such changes in the laws as were thought proper. But the Duke of York, who, by his patent, had 'full and absolute power' disapproved of legislative assemblies as inconsistent with the form of government he had established in his province. Yet he supposed no harm and much good might result from the justices being allowed once a year to meet with the governor and his council and make desirable changes in the laws which, after all, were subject to his own approval. These justices he complacently assumed, would be chosen by the people themselves as their representatives if another constitution were allowed. Moreover the court of assize was the most convenient place for the publication of any new lews or of any business of general concern. In establishing that court the duke's deputy did not concede any political privileges to the people. All its officers were his own subordinates; none of them his colleagues. Nicolls was, and continued to be, a provincial autocrat who exercised, indeed, his delegated powers with the prudence and moderation which belonged to his character, but who, in adroitly allowing his official dependents apparently to have with himself the responsibility of legislation did not in the least curtail his own vast authority."5

The first meeting of this general court of assize was held in the fort in New York on the last Thursday of September—being the 28th day of the month—1665, and it remained in session until October of the same year. At this meeting various amendments to the Duke's Laws were adopted, and several sachems of the Long Island Indians appeared and agreed to submit to the English authorities. The court was not convened in 1673 for the very good reason that the province had been recaptured by the Dutch in September of that year and was held by them until October of 1674. During that time the old court of burgomasters and schepens was revived. Whether the court was immediately re-established after the re-occupation of New York by the English in October, 1674, is not known. Its records are in

^{5. &}quot;History of the State of New York", by J. R. Brodhead, vol. II, pp. 63-64.

two volumes. One volume covers the period from September 28, 1665, to December 7, 1672, and this is in the State Library in Albany; the second volume covers the period from October 6, 1680, to October 6, 1683, and is in the library of the New York Historical Society. It is not known that any records of the court for the period between October, 1674, and October, 1680, are now in existence. The records of the court of burgomasters and schepens which existed in the time intervening between the two English occupations are in the city hall of New York City.

The earlier records of the court are in the handwriting of Matthias Nicolls, a namesake and perhaps a relative of Governor Nicolls, with whom he came out, and who appointed him a member of his council and secretary of the province. As secretary he was, ex officio, clerk of the court. By virtue of his office he was entitled to sit in courts of sessions in the several ridings, and frequently did so in Queens county, where he was a large land owner. He was mayor of New York in 1672, speaker of the assembly of 1683, and was on a commission of oyer and terminer the same year. He was a barrister of Lincoln's Inn, a man of character and capacity, and was highly esteemed.

The minutes of the court generally give a very good idea of the merits of the controversies that were before it, and throw strong light upon the social and economic life of the province at that time. For the most part the verdicts seem to have been just, but sometimes they were set aside by the governor and council, in consideration, as the record says, of "the equity of the case." Thus, on the first day of the first term of the court, September 28, 1665, the case of John Richbell against the inhabitants of the town of Huntington was tried before a full bench, Governor Nicolls presiding, and a jury of seven. John Rider appeared for the plaintiff, who, the record says, "declares upon an

account of trespass for that the defts' have given plaintiff unjust molestation, in the possession of a certain parcel of land, commonly called Horse Neck,6 to his damage, * * * whereupon he brings his suit." The plaintiff proved his title through mesne conveyances from one Daniel Whitehead, "who was the first purchaser thereof from the natives"; he then proved a subsequent "confirmation thereof from the Grand Sachem Wyandance, which was produced." The plaintiff having rested, "Mr. Leveredge, attorney for the defendants, in answer to the pl't's declaration, denies the unjust molestation, and pretends the want of timely benefit of the declaration. He argues the def'ts title to Horse Neck to be more valid, as being more ancient then the pl't's. The town of Huntington founded its title, through mesne conveyances, from the founders of Oyster Bay, who purchased large tracts of land in the neighborhood from the natives, long before the Grand Sachem Wyandance's confirmation of the deed to the plaintiff's grantor. But the great defect in defendant's case was that Horse Neck was not mentioned by name in the Oyster Bay deed, and plaintiff, in rebuttal, showed that it was reserved by the Indians at their sale, for hunting," by the testimony of several of the original purchasers of the Oyster Bay and Huntington land. The record proceeds:

"After a long debate of the cause on both parts it was referred to the jury who next morning brought in their verdict as followeth, viz. 'That upon serious consideration of the cause depending between Mr. Richbell and the town of Huntington, weighing all the evidence, we find for the defendant, we finding that the ancient deed is the right of the town of Huntington, wherein we find, by the bounds of Huntington's deed and by

^{6.} The land in suit, still called Horse Neck, is in the town of Greenwich, Connecticut, on the north shore of Long Island Sound, opposite to Huntington, on the south shore. At that time the line dividing New York from Connecticut was in dispute, but New York claimed further east than Horse Neck.

evidence that Horse Neck (which is in the controversy) be within the bounds of Huntington's deeds, unless further light can be made appear unto us by the honored governor and council, and that the plaintiff shall pay all costs, and charges depending upon this suit. * * * The Court having heard the case in difference between the pl't and defendants debated at large, concerning their title to a certain parcel of land commonly called Horse Neck, and having also seen and perused their several writings and evidences concerning the same, it was committed to a jury who brought in their verdict for the defendants, upon which the court, demurring, did examine further into the equity of the cause and upon mature and serious consideration, do find that the said parcel of land called Horse Neck doth of right belong to the pl't, it being purchased by the said pl't for a valuable consideration, and by the testimony of the first purchasers under whom the defendants claim was not conveyed or assigned by them to the defendants with their other lands upon which and divers other weighty considerations the court doth agree that the said parcel of land called Horse Neck doth of right belong and appertain unto the plaintiff and his heirs. And it is hereby ordered, that the high sheriff or under sheriff of the North Riding of Yorkshire upon Long Island, do forthwith put the said plaintiff, or his assigns, in possession thereof. And all persons are hereby required to forbear giving the said pl't or his assigns any molestation in the peaceable and quiet enjoyment of the premises."

Another interesting case heard at the first session of this court was that of Ralph Hall and his wife Mary Hall, of Seatallcott, Long Island, who were charged with witchcraft. Hall and his wife were arraigned before the court on the second day of October. The constables and overseers of Seatallcott, in the East Riding of Yorkshire on Long Island, charged that they,

"by some detestable and wicked arts commonly called witchcraft and sorcery did (as is suspected) maliciously practice and exercise at the said town of Seatallcott (Brookhaven) &c., on the person of George Wood, late of that place, by which wicked and detestable arts, the said George Wood (as is suspected) most dangerously and mortally sickened and languished and not long after, by the aforesaid wicked and detestable arts, the said George Wood (as is likewise suspected) died."

There was a second count for bewitching the infant child of the widow of said George Wood. Both prisoners pleaded not 276

guilty, and "threw themselves to be tried by God and the country." The record says that "thereupon several depositions, accusing the prisoners of the facts for which they were indicted, were read, but no witnesses appeared to give testimony in court viva voce." The case was tried before a jury composed of Thomas Baker of East Hampton, foreman; Captain John Symonds of Hempstead; Mr. Hallett and Anthony Waters of Jamaica; Mr. Nicolls of Stamford; Balthazar de Haart, John Garland, Jacob Leisler, Antonio de Mill, Alexander Munro and Thomas Searle of New York. The jury brought in the following verdict:

"Wee have seriously considered the Case committed to our Charge, against yo Prisonrs at the Barr, and having well weighed yo Evidence, wee finde that there are some suspitions, by the Evidence, of what the woman is Charged with, but nothing considerable of value, to take away her life. But in reference to the man, wee finde nothing considerable to charge him with."

The record proceeds:

"The court thereupon gave this sentence, that the man should be bound body and goods for his wife's appearance at the next session, and so on from session to session, as long as they stay within this government, in the meanwhile to be of ye good Behavior."

So they were returned into the sheriff's custody, and upon entering into a "recognizance,," according to the sentence of the court, they were released. On August 21, 1688, Governor Nicolls, just before his departure for England, gave them following release, from their recognizance:

"These are to certify to all whom it may concern, that Ralph Hall and Mary, his wife, (at present living upon Miniford's Island,) are hereby released and acquitted from any and all recognizances, bonds of appearance or other obligations entered into by them or either of them, for the peace of good behavior, upon account of any accusation or indictment of witch-

craft, brought into the Court of Assizes against them in the year 1665; there having been no direct proofs nor further prosecution of them since."

It is worthy of note that the laws which then existed in New England against witchcraft were not included in the Duke's Laws. The disposition of the authorities and the people of New York regarding the subject of witchcraft is clearly shown by the fact that in the instance of the trial just noted, the accused were not arraigned for witchcraft, but for murder, although the witchcraft accusation was included. Furthermore, neither of the accused was convicted. This was twenty-three years before the witchcraft superstition spread over Eastern Massachusetts, and the action of the New York court is in striking contrast to the later proceedings of the Massachusetts judiciary in relation to the same subject.

A similar case came before this court in 1670 and was disposed of in like lenient manner. Some inhabitants of Westchester complained to the court that Katherine Harrison, widow, late of Wethersfield, Connecticut, "being reputed to be a person lyeing under ye Supposicon of witchcraft," had settled in that town and intended to remain there. In July the governor ordered her to remove, but it appears that she paid no attention to this order, and a month later she was summoned by the governor to appear with her accusers in court, where he said "I shall endeavor a composure of these differences between them." At this hearing the case was continued because, as the record has it: "upon suspition of witchcraft reasons whereof do not so clearly appear." At the meeting of the court on October 1 of the same year, this disposition was made of the case:

^{7. &}quot;Documentary History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. IV, pp. 85-86.

"In the case of Katherine Harryson Widdow who was bound to the good Behaviour upon Complt of some of the Inhabitants of Westchester until ye holding of the Court. It is ordered, that in regard there is nothing appears against her deserving the continuance of that obligacon shee is to bee releast from it, & hath Liberty to remaine in the Towne of Westchester where shee now resides, or any where else in the Governmt during her pleasure."

The province of the members of this court to exercise legislative powers was often recognized by the Duke of York, and he especially referred to this whenever he desired to restrain the general assembly from encroaching upon what he considered his proprietary rights in legislation. In April, 1675, in a letter to Governor Andros, he refused his sanction to further sessions of the assembly as not,

"Necessary for ye ease or redresse of any grievance yt may happen, since yt may be easily obtained, by any peticon or other addresse to you at their General Assizes (weh is once a yeare) where the same persons (as Justices) are usually present, who in all probability would be their representatives if another constitution were allowed."

The composition of this court when the attendance of its members was complete, is shown by the record of this session of October, 1680. At that time the members who were present were Governor Edmund Andros, Secretary Matthias Nicolls, Counselors William Dyer, Frederick Phillipse, Thomas Dervall, and Stephen Van Cortlandt, Mayor Francis Rombout, Aldermen William Beekman, Johannes Van Brugh, Lewis, Marius, Verplanck and Wilson, Richard Betts, High Sheriff of Long Island or Yorkshire; Justices Topping Arnold, Woodhull and Wood of the East Riding, Willett of the North Riding and Hubbard, Elbertsen and

New York," vol. III, p. 230.

^{8. &}quot;Documentary History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. I, pp. 87-88.
9. "Documents Relative to the Colonial History of the State of

Palmer of the West Riding of Long Island; Teller and Van Dyck of Albany; Delavall of Esopus; Spaswill, Browne and Parker of New Jersey; Gardiner of Nantucket and Knapton and West of Pemaquid.¹⁰

The last session of this court was held October 3, 1683, Governor Dongan presiding. By an act of the assembly in the following year entitled "An Act to Settle Courts of Justice," this court, which had stood for a period of nineteen years, disappeared, to give place, as far as its jurisdiction at law was concerned, to the court of oyer and terminer. From Governor Dongan's report to the Lords of Trade the reason of the change in the judicial establishment appears to have been the difficulty of bringing together, from the remote parts of the province, the justices of the peace, who, with the governor, composed the court. The act abolishing the court is the second section of Chapter 31 of the acts of the second session of the first general assembly, passed October 29, 1684. It reads:

"An Act for the confirming all Judgments and proceedings in the former Courts, taking away the General Court of Assizes.

"And forasmuch as the General Court of Assizes, heretofore held annually in this Province is of great charge and Expense to the same, and by reason of the Great number of the members thereof nott so fit & capable to heare and determine matters and Causes of Civil nature, usually brought to the said Court; Bee itt enacted by the Authority of this Present Assembly; That the said Court called the General Court of Assizes and all Jurisdiction power and Authority belonging unto or used or exercised in the said Court or by any the Judges Ministers or Members thereof, bee from the first day of November next ensuing clearly and absolutely dissolved taken away and determined and that from and after the said first day of November next ensuing, Neither Judge, Justice, Member or Minister of the said Court whatsoever shall have any power or Authority to heare Examine or determine any matter or thing whatsoever in the said court called the General Court of Assizes or to pronounce or deliver any Judge-

^{10. &}quot;History of the State of New York," by J. R. Brodhead, vol. II, p. 336.

ment, Sentence Order or decree or to do any Judiciall or Ministeriall act in the same Court: provided always that all actions suits or Complaints now pending in the said Court of Assizes either by Bill, plaint, Declaracon, appeale, review, by Peticon to the Governor and Councell, or any other ways or means whatsoever, shall bee ended determined and finished by the High Court of Chancery."

From the foundation of the colony, there had been in some form a court which had supreme authority. Originally this was the governor and council, and in after years the court of assize. It remained, however, for the general assembly of 1691 to give this tribunal a distinctive existence and a name, and precisely to define its province and its powers.

In the code of civil procedure (§ 217) in the State of New York, it is declared that the supreme court of the state possesses, subject to certain constitutional limitations, "all the jurisdiction which was possessed and exercised by the supreme court of the colony of New York at any time." This declaration refers to the court, which was established by the act of the general assembly of 1691, passed May 6, as follows, establishing courts of judicature:

"And that their Majestyes subjects Inhabiting within this Province may have all the good proper and just wayes & means for ye securing and Recovering their just Rights and Demands within the same, Be it further enacted, And itt is hereby enacted and ordained, by the Authority aforesaid that there shall be held and kept a Supreame Court of Judicature, which shall be Duely & Constantly Kept att the Citty of New Yorke and not Elsewhere, att the severall and Respective times hereafter mentioned. And that there be five Justices att Least appointed & Commissionated to hold the same Court, two whereof together with one Chief Justice to be a Quorum. Which Supream Court are hereby fully impowered and Authorized to have Cognizance, of all Pleas, Civill, Criminal, and Mixt, as fully & amply to all Intents & purposes whatsoever, as the Courts of Kings Bench, Comon Pleas, & Exchequer within their Majestyes Kingdome of

^{11. &}quot;The Colonial Laws of New York," vol. I, p. 172.

England, have or ought to have, In & to which Supreame Court, all & every person and persons whatsoever shall or may if they shall soe see meet, Commence, or remove any Action, or suite the Death or Damage Laid in such Action or suit being upward of Twenty pounds, and not otherwise, or shall or may, by Warrant, Writt of Error, or Certiorari, Remove out of any of the Respective Courts of Mayor & Aldermen Sessions and Comon Pleas any Judgement Information or Indictment, there had or depending & may Correct Errors in Judgment, or Reverse the same, if there be just cause. Provided always, that the Judgment removed shall be upwards of the Value of Twenty Pounds. Always Provided, and be it further Enacted by the Authority aforesaid, this Supream Court shall be Duely & Constantly Kept, once every Six Months, and noe oftener, that is to say on the first Tuesday of October, and on the first Tuesday of Aprill annually and every yearc, att the Citty hall of the said Citty of New York, Provided they shall not sitt Longer than Eight Dayes. And be it Further Enacted by the Authority aforesaid, that itt shall not be Lawfull for any person or persons whatsoever appointed, elected, or Commissionated to be A Justice or Judge of the aforesaid Courts to Execute or officiate, his or their said place, or office, untill such time he or they shall Respectively take the Oaths appointed by Act of Parliament, to be taken instead of the Oaths of Allegiance & Supremacy and subscribe the Test in Open Court. And Be it Further Enacted by the Authority aforesaid that all and every of the Justices or Judges of the severall Courts before mentioned be and are hereby sufficiently Impowered, to make, order, and Establish, all such Rules and Orders for the more orderly practizing & proceeding in their said Courts, as fully and amply to all intents and purposes whatsoever as all or any of the said Judges of the severall Courts of the Kings Bench, Comon Pleas & Exchequer in England Legally doe. Provided always, and be it Further Enacted by the Authority aforesaid that no Persons Right or property shall be by any of the aforesaid Courts Determined, except where matter of Fact, are either acknowledged by the Partyes, or Judgement be acknowledged or passeth by the Defendants faults for want of Plea or Answer, unless the fact be found by the verdict of Twelve Men of the Neighborhood, as itt ought of Right to be Done by the Law."12

It appears from the foregoing that the life of the court was limited to two years, but it was empowered and authorized "To

^{12.} This act is in the parliamentary roll manuscript in the State Library at Albany, indorsed "Anno R. R. & R. Will et Mariae tertio first Assembly first session." It is reprinted in "Laws of New York" Bradford edition, 1694, p. 2, in the office of Secretary of State, Albany, and in "Colonial Laws of New York," vol. I, p. 229.

have cognizance of all Pleas, Civil, Criminal & Mixt, as fully & amply to all intents and purposes as the Courts of Kings Bench, Common Pleas & Exchequer in England." The members of the court were judges of *nisi prius*, and annually performed a circuit through the counties, for which purpose and at which time they had from the governor commissions of oyer and terminer and general gaol delivery, and in these commissions the different county judges were joined.

By act of the assembly, November 11, 1692, the life of the court was extended for another two years and these additional provisions were made:

"that the term of the court should be holden for the county of Orange as well as for the city and county of New York on the first Tuesday in April and October annually in every year; for the city and county of Albany the first Tuesday in May; for Ulster and Duchess counties, the third Tuesday in May; for the county of Westchester the last Tuesday in June; for Kings County the first Tuesday in August; for Queens County the second Tuesday in August; for Suffolk County, the third Tuesday in August; and for Richmond County the second Tuesday in June.¹³

"that one of the Justices of the Supreame Court Commissionated as aforesaid Shall once in Every year at the aforcsaid times and places in each Respective County aforesaid goe the circuit, and at the places and times aforesaid there hold Supream Court, being then assisted by two or more of the Justices of the Peace of the severall Respective County's where the said Supream Court is to be holden and shall there hear and determine all process and pleas there depending as issued as aforesaid, Always Provided that in Such County where there is noe process Issued or pleas depending, that the Justice shall not be then obliged to goe the Circuit to the Said County, anything contained herein to the Contrary hereof in any ways notwithstanding. Always provided the Sessions of the said Supream Court Shall not continue nor hold lorger at New York than five days, and at the other respective places in each respective County than two days and no Longer."

On November 24, 1695, an act of the assembly of that year

^{13. &}quot;Colonial Laws of the State of New York," vol. I, p. 306.
14. "Colonial Laws of New York," vol. I, p. 307.

continued the court for another two years and similar action by the assembly on April 21, 1697, extended the life of the court for a year more. In 1699, after the assembly had defeated a bill to perpetuate the judicial establishments, Governor Bellomont continued the courts by an ordinance passed in May and published in August of that year.15 The ordinance was practically in the same form and in the same terms as the act of 1691. The establishing of the court by ordinance was not relished by the people, who regarded the assumption, on the part of the crown, of the right to erect a court of justice, or to revive a defunct court, as a just cause for grievous complaint. Members of the bar again and again in pending cases pleaded against the court's jurisdiction, that the court had no legal existence subsequent to the expiration of the limitation fixed by act of assembly. It rested with assembly to grant money for the payment of the judges' salaries which the governor could at any time revoke or recall their commissions. So it is not surprising that the courts and the judges were the center of discussion and warfare over the relative rights of the representative body of the people and the executive. Sometimes the assembly refused money for salaries and endeavored thus to influence appointments to the bench. The history of the court is in large sense a history of the politics of the century, and of the gradual growth of that public demand for freedom which culminated in the revolution.

The first court was composed of the chief justice, "appointed and commissionated" for that purpose, with four associates as puisne judges; the chief justice and two associate judges made a quorum. Nine days after the passing of the act the governor named as chief justice, Joseph Dudley; as second justice, Thomas

^{15.} See preceding chapter of this volume, p. 228.

Johnson; and as associate judges, William Smith, Stephen Van Cortlandt and William Pinhorne; and shortly after James Graham was appointed attorney general. Of these only Van Cortlandt was a native of the province, and none of them was trained in the law. Bellomont, in his ordinance of 1699, made no provision for any specific number of justices. In 1701 Chief Justice Attwood decided that he had the power to hold court alone, and this he did until late in the same year Abraham de Peyster and Robert Walters were added as his associates. As thus composed the court remained for fifty-seven years. In November, 1758, increasing business before the court compelled its enlargement, and another judge, David Jones, was added, making four in all, including the chief justice, and this was continued as long as the court lasted. Except for the lapse of a few years during the administration of Governor Bellomont, the court was in continuous existence until it was suspended at the breaking out of the revolution.

The usual requirements for admission to practice were a college university education and three years study under an attorney. If the candidate had not the requisite education, then he was required to serve seven years under an attorney. In either case the chief justice recommended the candidate to the governor, who under his hand and seal granted a license of practice. When this license was produced to the court the usual oaths were required to be taken, and the candidate was then declared to be qualified to practice in every court in the colony.

The first chief justice, Joseph Dudley, remained in office only eighteen months, from May 15, 1691, to November 11, 1692, being removed by Governor Fletcher because he was a non-resident. He was succeeded by his associate, William Smith, a native of England, but a resident of the province since 1686. After a

service of eight years Smith was displaced for a little less than a month by Stephen Van Cortlandt. Again commissioned, November 25, 1700, he was compelled to give way finally two months afterward to Abraham de Peyster, then a puisne judge, who was appointed temporarily until the new chief justice, William Attwood, appointed directly by the crown, should arrive from England. Within less than a year Attwood fled the province to escape arrest by the new governor just arrived. William Smith was restored to the chief justiceship, which he held until another English bred lawyer came over,-John Bridges, doctor of laws, who was commissioned April 5, 1703. Bridges died within less than a year, and Roger Mompesson, a native of England, a barrister, and at one time recorder of Southampton, was commissioned July 15, 1704, chief justice of New York and New Jersey, in which latter province, or Philadelphia, he resided at the time. During his tenure he claimed to have made the practice of the courts of the province "more conformable to the practice of Westminster Hall than any other of her majesty's plantations in America." On the death of Mompesson while in office, Lewis Morris, March 13, 1715, a native of New York, but long a resident of New Jersey, succeeded to the head of the bench. Morris was an ultra republican, and in New Jersey he had been the conspicuous popular leader in the opposition to Governor Cornbury. His judicial action in the case of Governor Cosby against Rip Van Dam and his removal from office have been presented in the preceding chapter of this work.¹⁶ In the same connection has been given an account of the rise of James DeLancey to be chief justice.

Benjamin Pratt, who succeeded to the position held by De-Lancey upon the death of the latter in 1760, had not been a mem-

^{16.} See page 248.

ber of the court until he was commissioned chief justice. He was a native and a resident of Massachusetts, and eminent for learning in the annals of the colony. His appointment was the occasion for an outbreak both by the citizens and the members of the bar against not only the governor but also against the new chief The real objection to Pratt was that he was a noniustice. resident, and his appointment was a glaring example of the exercise of the power of the governor to place on the bench any individual whom he might desire, regardless of the wishes of the people. Pratt had been commissioned "during pleasure" instead of for life during good behavior, as his predecessor DeLancey had been and his acceptance of the commission on a condition "contrary to New York precedent", was seized upon by the faction then in control of the assembly as an additional weapon against the party "supporting the established constitution." The three other judges of the court,-Daniel Horsmanden, John Chambers and David Jones,-all of whose commissions were in abeyance by reason of the death of King George II., not only were disappointed in not being preferred for the first place, but were highly indignant that the new chief justice should have accepted his commission on other terms than for good behavior. Judge Chambers resigned his commission, and Judge Horsmanden and Judge Jones refused to accept a renewal of their commissions on the terms offered. The assembly passed resolutions severely reflecting upon the chief justice for accepting his commission "during pleasure", and inveighing against Lieutenant Governor Colden for refusing to grant commissions "during good behavior"-both Colden and Pratt being declared enemies to the colony, to the government and the constitution, and the threat was made that no salaries should be granted either to Colden or to the judges unless judicial commissions were to run during good be-

havior. In the end, however, Colden succeeded in placating the other judges, who consented to accept their commissions on the terms offered, during pleasure.

Pratt held office only a year, for he died in 1762. His successor, the eleventh and last chief justice of the colonial period, Daniel Horsmanden, was a native of Kent, England, and had been an associate judge of the court since January 24, 1736. When he was advanced to the chief justiceship, March 16, 1763, he was over seventy years of age, and he continued in office until his death, after the Declaration of Independence, on September 20, 1778. William Smith, the younger son of the earlier chief justice of that name, received the appointment of chief justice during the revolution. In his younger days he had published a "History of New York", and was an ardent Whig, but when the war broke out he became a loyalist. It is considered doubtful if he ever held court. When the British troops left the province at the close of the war, he went with them, and he is not generally accounted one of New York's chief justices.

When the war for independence broke out, the court was composed of Chief Justice Daniel Horsmanden and Justices Robert R. Livingston, George D. Ludlow and Thomas Jones. The court was divided in its political sentiments. Justice Livingston sided with the colonists, while Chief Justice Horsmanden and Justices Ludlow and Jones cast their fortunes with the cause of the King. Horsmanden remained in New York city, where he exercised the duties of his office. Ludlow and Jones retired into Westchester county, where, in that section held by the British, they continued their judicial work. After the death of Horsmanden in 1778, Justice Ludlow acted as chief justice and continued thus to act until at the close of the war he left New York for

Canada. Both Ludlow and Jones were attainted by the State of New York in 1779 for having adhered to the royal cause.

When the court was organized in 1601, only the chief justice and the second judge received salaries. The salary of the chief justice was one hundred and thirty pounds, and that of the second judge one hundred pounds per annum; the other members of the court and the attorney general were not salaried, but in 1693 the attorney general had a salary of fifty pounds. In 1698 the salary of the chief justice was reduced to one hundred pounds, but four years afterward, in 1702, it was raised to three hundred pounds, with a fee of ten shillings on the first motion in every case; at the same time the second judge was awarded one hundred and fifty pounds, and the three associates fifty pounds each. In 1765 the chief justice had a salary of three hundred pounds, while the allowance of the associate judges was raised for riding circuits to two hundred pounds. After 1744 the chief justice was to receive five hundred pounds sterling from the crown, and in addition three hundred pounds New York currency from the provincial treasury; the salary of the other judges remained at two hundred pounds New York currency, equivalent to one hundred pounds sterling, besides their fees. Upon the breaking out of the revolution this salary arrangement was entirely stopped.

Following is a list of the chief justices and associates or puisne judges during the colonial period with the dates of their commissions:

Chief Justices: Joseph Dudley, May 15, 1691; William Smith, November 11, 1692; Stephen Van Cortlandt, October 30, 1700; William Smith, November 25, 1700; Abraham de Peyster, January 21, 1701; William Attwood, August 5, 1701; William Smith, June 9, 1702; John Bridges, April 5, 1703; Roger Mompesson, July 15, 1704; Lewis Morris, March 13, 1715; James 289

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DeLancey, August 21, 1733; Benjamin Pratt, November 11, 1761; Daniel Horsmanden, March 16, 1763.

Associates or Puisne Judges: Thomas Johnson, May 15, 1691; William Smith, May 15, 1691; Stephen Van Cortlandt, May 15, 1691; William Pinhorne, May 15, 1691; William Pinhorne, April 3, 1693; Chidley Brooke, April 3, 1693; John Lawrence, April 3, 1693; John Guest, June, 1698; Abraham de Peyster, October 4, 1698; Robert Walters, August 5, 1701; John Bridges, June 14, 1702; Robert Milward, April 5, 1703; Thomas Wenham, April 5, 1703; James DeLancey, June 24, 1731; Frederick Phillipse, June 24, 1731; Frederick Phillipse, August 21, 1733; Daniel Horsmanden, January 24, 1736; John Chambers, July 30, 1751; Daniel Horsmanden, July 28, 1753; David Jones, November 21, 1758; Daniel Horsmanden, March 26, 1672; David Jones, March 31, 1762; David Jones, March 16, 1763; William Smith, March 16, 1763; Robert R. Livingston, March 16, 1763; George D. Ludlow, December 14, 1769; Thomas Jones, September 29, 1773; Whitehead Hicks, February 14, 1776.

During the same period the attorneys general were: James-Graham, May 15, 1691; Sampson Shelton Broughton, February 4, 1702; May Bickley, April 18, 1704; Sampson Broughton; John Rayner, March 24, 1708; David Jamison, June 10, 1712; James Alexander, July 28, 1721; Richard Bradley, March 11, 1722; William Smith, August 28, 1751; William Kempe, November 4, 1752; John Tabor Kempe, July 30, 1759; James-Duane, 1767.

Under the Duke's Laws of 1690, Governor Nicolls was empowered to issue a commission of over and terminer to tryoffenders in capital cases. By the assembly act of 1683 provision

^{17.} Ordered by Queen Anne to be appointed, but he was never commissioned.

was made for a regular court of oyer and terminer and general gaol delivery to consist of one judge of the supreme court and four justices of the peace especially commissioned for the purpose in each county where the terms were to be held. In 1691 the assembly act provided that a court of oyer and terminer and general gaol delivery should be held in each circuit, the court to be composed of one of the supreme court judges assigned to the circuit and specially commissioned by the governor, and some of the county judges within the circuit. In the city of New York the mayor and four aldermen instead of the county judges sat with the circuit judge.

When on a circuit, the sheriff of the county met the judge and his attendants upon his entrance into the county town and conducted him to his lodging, which, according to the etiquette of the time, was not to be the same as that occupied by the lawyers. Toward the end of the colonial period the judges began to sit in gown and bands, though the bar never donned any distinctive habit. Prosecution was mainly by information, by order of the governor and council, instead of by indictment by a grand jury. Often prisoners were committed under warrants issued by the council, of which the judge who might try the prisoner was perhaps a member. This gave rise to frequent complaint and sometimes became the occasion of scandal. Warrants were even issued where the grand jury had refused to bring in an indictment. In its criminal branch the supreme court of the colonial period left a tarnished record. The trial, conviction and hanging of Leisler and Milbourne in April, 1691, at a special over and terminer, composed of Joseph Dudley. William Smith, and Frederick Phillipse, who immediately after the trial were commissioned judges of the newly erected supreme court caused intense public feeling against the new court and its

judges. The trial and conviction in 1700 of Nicholas Bayard, Leisler's foremost enemy, did not add to the reputation of the court or make it more popular with the people, although the result of the trial was less a miscarriage than its predecessor had been. Another and more widely known trial in the criminal branch of the supreme court was that of Zenger, the printer of the New York *Weekly Journal*, for seditious libel in 1735, an account of which is given on another page of this volume. Less important in vital interests and far-reaching results than the Zenger case, but not less famous, and even more discreditable as a record of the weakness and credulity of the judges and other officers connected with it, was the trial of the alleged conspirators in the so-called negro plot of 1741. It has been well said of this affair:

"For its disregard of all rules of legal evidence, for its prostitutions of the forms of law, for the perpetration of cruelty, for popular credulity and cowardice, for the abnegation of all sense of mercy, for the oppression of the weakest and most defenseless, the whole transaction was without precedent, and has no parallel in any civilized Community.²⁰

In the administration of justice by the Dutch in New Netherland, there was no distinction between what might fitly be done in a court of law and a court of equity. All causes of whatsoever character, civil or criminal, were heard in one tribunal. It was not long after the Dutch New Netherland had become the English New York that the need of having a separate tribunal to supply the defects not provided for, was felt. Gradually the increase of wealth which came about through commerce and speculation

^{18.} See page 252.

^{19.} See page 257.
20. "Popular History of the United States," by W. C. Bryant and A. Gay, vol. III, p. 234.

m land grants, with the attendant growth of families, gave rise to controversies concerning subjects of equity jurisprudence which the existing courts of law had not the power to entertain. To meet this need, a court similar in practice to the English court of chancery was ordained. Under the Duke's Laws the equitable jurisdiction of the town court was limited to five pounds, but in the courts of sessions in the three ridings there was no limitation. Proceedings in equity were conducted by bill and answer. Witnesses were examined according to the manner of the court of chancery in England at that time, and all suits in equity were determined by the court without the intervention of the jury. This mode of administering legal and equitable relief in one and the same tribunal continued for many years even after the establishment of the court of chancery in 1683.

The earliest record of a proceeding in chancery is cited by Murray Hoffman in "A Treatise upon the Court of Chancery". It was during the rule of Governor Andros:

"To the Right Honorble Major Edmond Andross Esqr Left & Governe Generall of his Royal Highness his Territoeries in America. Thomas Wandall Complainant. Oliffe Stephens Deft And the deft to ye Complaints bill humbly answereth yt alt 30 years last past The Land in questione was by ye authority then in being-Ordered for a Lane or Alleyabt 16 years within sd tyme aforementioned—The 2d ground by Orde of the Burge Masters of this City was exposed to sale-; thereupon this Complaint & deft joyntly purchased ye same—; & soon after made eqwale divisione thereof; upon the sd ground this complaint hath built; & ever since the purchase enjoyed e quietly possessed ye same-And all soe this deft hath until ye 7th Novembe 1676-by virtue of his Title aforesd & his quiett possessione he humblt conceives, makes him an undoubted right and ye Mutual agreemt upon partitione as aforsd being confirmed by a judgmt given In the Mayors C. T. as p record appears: In tende Consideracon whereof humbly prays yr Honr and honble Bench to take the ye into yr Grave Consideracon & be pleased to grant judgmt according to Equity & Justice and this deft as in duty bound shall pray &c (Endorsed) The Answer. Tho Wandall plf Oloff Stevens deft 1677 put off by the Go."

In the act of the Assembly of 1683 establishing a judiciary scheme a court of chancery was included:

"There shall bee a Court of Chancery within this province which said Court shall have power to heare and determine all matters of Equity and shall be Esteemed and accounted the Supreme Court of this province And be it further Enacted That the Governor and Council bee the said Court of Chancery, and hold and keep the said Court; And that the Governour may Depute or nominate in his stead a Chancellour, and be assisted with such other persons, as shall by him bee thought fitt and Convenient. Togerther with all necessary Clerkes and other officers as to the said court are needful."

By this act the governor and his council were continued as the court of chancery; the only effect of the act was in giving legislative sanction to a jurisdiction which had hitherto been exercised as a prerogative of the crown. The court of chancery was ordered to be held on the first Thursday of every second month in the year. John Spragg was made master of rolls, and John Knight and Recorder James Graham were its clerks. By an act of the assembly of 1691 the existence of this court is prolonged:

"Be it further Enacted by the Authority aforesaid that there shall be a Court of Chancery within this Province which said Court shall have power to heare and determine all matters Equity and shall be Esteemed and accounted the High Court of Chancery of this Province: And Be It Further Enacted by the authority aforesaid that the Governor & Councill be the said High Court of Chancery, and hold and Keep the said Court; and that the Governour may Depute, Nominate & Appoint in his Stead A Chancelor, and be assisted with such other Persons of the Councill as shall by him be thought fitt and Convenient, together with all Necessary officers, Clerks, and Registers as to the said High Court of Chancery are needful."²²

The life of the court thus established was limited to seven

^{21. &}quot;Colonial Laws of New York", vol. I, p. 128.

^{22.} Ibid., vol. I, p. 230.

years. From and after the expiration of this time in 1698 until the end of the colonial period, the only authority for the exercise of equity jurisdiction by the successive governors was by ordinance, or executive order. From first to last the court was the most unpopular judicial establishment in the colony. The opposition to it was grounded on the exercise of its powers by the king's representatives, and not by legislative-constituted judges. "The court of chancery as held by one man and that man generally a stranger to the country, and always the immediate representative of the Crown, was especially obnoxious to public prejudice."23 The governors in the early years of the century were often in doubt as to wisdom of exercising the powers thus granted : to them, and some of them hesitated to carry out their instructions to appoint the court. Bellomont wrote to the lords of trade in 1700: "There is a great want of a Court of Chancery here, but no body here understanding it rightly I delay appointing one till the Judges and Attorney Generals come from England."24 Several months later, in January, 1701, he again recorded his delay in erecting the court in a communication to the lords of trade, saying: "I am extremely importun'd to erect a court of chancery, many people being like to be ruin'd for want of one. I shall therefore very soon settle that court tho' I should make no decrees till the arrival of the judge and attorney general."25

It was left for Bellomont's successor, Lieutenant Governor Nanfan, finally to erect this court. In June, 1701, he ordered the court of chancery to be held, commencing the first Thursday in the following August, the sessions to be monthly thereafter. The

^{23.} Butler's "Outline of the Constitutional History of New York."
24. "Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. IV, p. 721.

^{25.} Ibid., vol. IV, p. 834.

court consisted of the governor, two or more members of the council, and a register, clerks, and masters, who were appointed.

It was the undeviating policy of the crown to refuse to give up its prerogative claim to equitable jurisdiction, or to submit it to such limitations as a provincial legislature might see fit to impose. On the other hand, the general ground of opposition to the court was that, being founded on mere prerogative, personal liberties and property were subject, not to law, but to the conscience or disposition of the royal representative; they were made precarious by the extortionate fees of officers who were not under control of the provincial assembly, by the excessive bail exacted in cases of ne exeat writs, and by various delays of justice through "the manifold contrivances of lawyers, by their voluminous bills of complaints, answers, and dilatory pleas," which were countenanced by the court officers. One specific and pronounced cause of opposition to the court grew out of the question of land rents. Upon the sale of land by the crown, quit rents were reserved and were allowed to accumulate in arrears. The court of chancery was a medium for collecting these rents. Small land holders thus had personal reason for hostility to the court, and many great land holders feared lest the court should invalidate their titles to land which they had received in grants from corrupt governors.

Opposition to the court was so pronounced that when Cornbury arrived he suspended its sessions and directed an investigation into the complaints regarding it. But in 1704 he re-established it by ordinance, and it continued from that time until the breaking out of the war for independence. Cornbury made some changes in the conduct of the court especially in lowering the fees, but the hostility to it became more and more radical, and in 1708, just after Lovelace had come out as governor, the assembly passed

a resolution declaring that the establishment of such a court by the government was illegal, unprecedented, and dangerous to liberty. During the time of Lovelace and Ingoldesby the court fell into disuse. In 1710 Hunter revived it, assuming the office of chancellor and appointing two masters, two clerks, an examiner and a register. As a result of this action by Hunter, hostility to the court again became outspoken. In November, 1711, the assembly resolved that "the erecting a court of equity, without consent in general assembly, is contrary to law, without precedent and of dangerous consequence to the liberty and property of the subjects." The lords of trade answered this declaration by asserting the right of the crown and for sixteen years thereafter, the court was continued without serious opposition.

In 1727 the assembly again took decided stand in protesting against the court. In this instance the influence of Frederick Phillipse was instrumental in moving the assembly to action. Phillipse had been defeated in a case in the court of chancery wherein Governor Burnet sat as chancellor. He was speaker of the assembly, and feeling himself aggrieved induced the assembly's committee on grievances to report certain resolutions which he had caused to be carried by the house. The report in the minutes of the assembly is as follows:

"Die Sabbath: 25th November, 1727.

"Coll. Hicks from the Committee of Grievances reported that, as well as by the Complaints of several people as by the General Cry of his Majesty's subjects Inhabiting this Colony, they find that the Court of Chancery as Lately assumed to be Sett up Here renders the Libertys and properties of the said Subjects extremely Precarious, and that by the violent measures taken in & allowed by it some have been ruined, others obliged to abandon the Colony, and many restrained in it either by Imprisonment or by Excessive bail exacted from them not to depart even when no manner of suits depending ag't them and therefore are of opinion that the Extraordinary proceedings of the Court and Exorbitant fees and charges Counter-

nanced to be Exacted by the Officers and Commissioners thereof are the greatest grievance and oppression this colony has ever felt and that for removing the fatal consequences thereof they had come to several resolutions which being read were approved by the House and are as follows:

"Resolved, That the Erecting or Exercising in this Colony a Court of Equity or Chancery (however it may be Termed) without Consent in General Assembly is unwarrantable and Contrary to the laws of England and a Manifest oppression and grievance to the subjects and pernicious Consequence to their Libertys and propertys.

"Resolved, That this House will at their next meeting prepare and pass An Act to declare and adudge all orders ordinances and Devisees and proceedings of the court so assumed to be Erected and Exercised as above mentioned to be Illegal Null and void by Law and of right they

ought to be.

"Resolved, That this House will at the same time take into consideration whether it be necessary to Establish a Court of Equity or Chancery in this Colony in whom the Jurisdiction thereof ought to be vested and how far the powers of it shall be prescribed and Limited examined and Compared with the Journal of the General Assembly."

The governor and council made answer to the usual effect that the resolutions were "unwarrantable and highly injurious to his majesty's prerogative." Certain reforms were instituted in the administration of the court, and there the matter ended for the time. But the court had been brought into greater disrepute in the colony, and subsequent governors became more reluctant to sit as chancellors. The historian Smith wrote that as a result of this action of the assembly "the wheels of the Chancery have ever since rested upon their axis—the practice being condemned by all gentlemen of eminence in the profession."

Attacks continued to be made upon the governor's exercise of equitable jurisdiction, and in 1735 the assembly, taking into consideration the action of Governor Cosby in a land case where a plea had been interposed to his jurisdiction, adopted a resolution "That a Court of Chancery, in this province in the hands, or under the exercise, of the governor, without consent of general

assembly is contrary to law, unwarrantable, and of dangerous consequence to the liberties & properties of the people." When in 1737 the assembly passed a bill "for establishing & Regulating Courts to Determine Causes for Forty shillings & under", it again called the attention of the governor to the general desire of having all courts of general jurisdiction established, and their several jurisdictions and powers appointed and limited, by the legislature, and not left any longer to the uncertain exercise of prerogative power. This representation of the assembly had little effect, and from this time to the revolution the chancery was not often attacked in the legislative body, but the business transacted in it gradually became small and unimportant.

In December, 1685, Governor Dongan established a court of exchequer to determine all royal revenue cases. It was composed of the governor and council, and met in the city of New York on the first Monday of each month. Dongan held that this court was necessary for the reason that in the other tribunals there was a "great hazard of venturing the matter on country jurors; who, over and above that they are generally ignorant enough, and for the most part linked by affinity, are too much swaved by their particular humors and interests." The court heard all matters at issue between the crown and the colonists relative to lands, rents and revenue. Its unpopularity was assured from the beginning, for the people were not content to have the causes in dispute between themselves and the government left to the arbitrary decision of the representative of the government. One of the charges brought against Leisler in 1600 rested upon this point:

"That by his instruments he hath and doth exact (by pretense of Pre-

rogative and for the use of the crown) Customs Impositions and Excise never granted to the crown; which that he might the better accomplish, he hath taken upon him to erect a Court of Exchequer, consisting as members of the said court, viz: Samuel Edsall, Benjamin Blagg, Johanes Provest, Hendrick Jansen, John Cowenhoven, who begin their session on the 20th January, the 18th of the same month several of the Inhabitants received summons to appear at this unusual court on the day above said, to give their reasons why they would not pay the monies they were indebted to the King for Custom."

In the royal instructions to the governors who immediately succeeded Dongan were directions to erect a court of exchequer, but none appears to have been established. By the assembly act of 1691 the supreme court had cognizance of all matters in exchequer as in the court of exchequer in England. The first exchequer-chamber business attempted in the supreme court was made by Chief Justice Attwood, shortly after his arrival in 1701. Attwood and Attorney General Sampson Shelton Broughton had been sent out from England to assist Governor Bellomont to suppress the piracy which was largely engaged in by the merchants and traders of New York. Attwood had a commission as judge of admiralty for New England, New York and New Jersey, in addition to the chief justiceship of New York. Soon after his arrival he took up the case of a vessel which, seized for lack of registry under the navigation acts, had been discharged by the admiralty judge. Although it was desired to prohibit, by writ, the execution of the decree discharging the vessel until the ad-

^{26.} This charge appears in a pamphlet printed in New York and reprinted in London in 1690, entitled "A Modest and Important Narrative of Several Grievances and Great Oppressions That the Peaceable and most Considerable Inhabitants of Their Majesties Province of New York in America Lye under, By the Extravagant and Arbitrary Proceedings of Jacob Leisler and his Accomplices. In "Documents Relative to the Colonial History of the State of New York", by E. B. O'Callaghan, M. D., LL.D., vol. VII, p. 683.

miralty proceedings could be reviewed. No court in the province appeared to have an unquestioned right to issue such a writ. The chancery jurisdiction of the governor was questioned; the supreme court was claimed by the lawyers to be a court of law only. Attwood concluded that the supreme court, sitting as a court of exchequer, had the required power and thereupon, assuming to sit as a baron of the exchequer, he directed "a suggestion to be exhibited to it for a prohibition to the court of admiralty upon its sentence in that matter." But as "one of the persons designed for a judge in the supreme court had given the obnoxious sentence in favor of the ship," and the other was a merchant who might be concerned in interest, the governor suspended the granting their commissions till this matter should be over in the supreme court, and empowered Attwood alone to determine the matter. Notwithstanding the owners of the vessel "Men of good estate" as they were called appealed directly to the king, the chief justice proceeded to try the crown's claim to a forfeiture. The captain refused to appear, but on the facts found a forfeiture was declared, under which the vessel was sold at public auction.27 It does not appear that Attwood's exercise of equity jurisdiction in this instance was followed as a precedent by any of his immediate successors. Exchequer matters were heard at the regular terms of the supreme court. When, however, as frequently happened, the ordinary business of the court consumed the full term, the exchequer matters were taken up at the conclusion of the regular sessions. Soon the exchequer business accumulated so that it could not be disposed of in the regular terms, and in April, 1702, Lieutenant Governor Nanfan ordered separate terms of the supreme court for the determination of these cases.

^{27. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. IV, p. 923.

The practice of holding these special terms did not long continue, and there was very little if any exchequer proceedings until in 1733 Governor Cosby, by his attorney general, filed a bill in the supreme court as a court of exchequer against Rip Van Dam.28 In 1734 public feeling in the colony against exchequer proceedings was further intensified by the celebrated trial of John Peter Zenger, charged with seditious libel.29 After the trial and acquittal of Zenger, proceedings of importance were had on the exchequer side of the supreme court during the colonial period. In 1642, during the administration of Lieutenant Governor Clarke, the assembly passed an act for the regulating of the payments of quit rents and the partition of lands. This act gave jurisdiction to the supreme court. As Clarke expressed it in a letter to the lords of trade, "a Court of Exchequer is in effect by this act established, whereas the uncertainty arising from the different opinions of the lawyers on the legality of such a Court without an act to countenance it, was one principal Cause of the unhappy animosities that a few years ago miserably divided the people, and had almost ruined the place."30 The subject of the re-establishment of such a court continued to be agitated by the successive royal governors. As late as 1766, Governor Moore, writing to the Earl of Dartmouth, one of the lords of trade, declared his opinion that such a court was necessary and added, "It is a Court much dreaded by the Inhabitants here, and one which they do not wish to see established among them, as it must necessarily bring to light many dark transactions which have been committed against the crown, but as there are no salaries appointed for the Executive Officers, it will be impracticable to obtain anything of

^{28.} For an account of this case see page 251-252, ante.

^{29.} See page 252, ante.
30. "Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. VI, p. 215.

the kind from the Legislature here, for the reason above mentioned."³¹ Answering this communication the lords of trade, conceding the importance of establishing such a court, gave their opinion that "It is a consideration of too great importance to be hastily taken up". And it appears never to have again been taken up.

Prior to 1678, whenever occasion arose for admiralty proceedings, they were exercised by the governor in virtue of his prerogative. Governor Andros, in the beginning of his administration, exercised these powers under his general commission, but this authority was not considered quite sufficient, and therefore on May 20, 1678, the Duke of York gave to him a special commission to act as vice-admiral throughout the entire colonial government. This commission also authorized him to appoint a judge, register and marshal in admiralty who should hold their offices during the pleasure of the governor.

"Whereas it may be convenient for you to be authorized and empowered to appoint a Judge, Register and Marshall of the Admirality within your governont by reason of its distance from hence, (notwithstanding the clause in your commission of Vice Admirall wen reserves the nomination of them to myself). These are therefore to authorize and empower you, and I hereby authorize and empower you from time to time dureing the vacancyes of the said places to nominate constitute and appoint the Judge Register and Marshall of the Admiralty aforesed to continue dureing my pleasure only. Given under my hand and seale at St. James's ye 20th day of May 1678."

For some time, however, no regular tribunal was established, the governor contenting himself with issuing special sessions for the trial of admiralty cases as they came up, while

^{31. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. VII, p. 827. 32. Ibid., vol. III, p. 268.

other cases which would naturally come before a court of this character were left for hearing and determination to the mayor's court of New Amsterdam. On October 5, 1678, Andros commissioned Mayor Stephen Van Cortlandt to be judge of the court, and the aldermen of the city to be his assistants; the city clerk, William Leet, was commissioned to be register, and the sheriff, Thomas Ashton, was to be marshal. For several years thereafter this organization of the court continued, the mayor of the city ex officio, receiving a commission as judge. In this capacity Thomas Delavall succeeded Stephen Van Cortlandt in 1679. Subsequently, in 1683, Lucas Santen, who was then collector of the port, was appointed judge, and he was succeeded in 1684 by John Palmer.

In the commissions of all the early governors, Dongan, Sloughter and Fletcher, there was authority similar to that in the commission of Andros to erect a court of admiralty. On November 19, 1694, Governor Fletcher, referring to this fact, asked the lords of admiralty of England for power to appoint a judge, register and marshal for the province, but no appointments were made for several years thereafter. In September, 1702, Cornbury, writing to the lords of trade, said:

"I have made the best inquiry I can, and find that the first time there was a regular Court of Admiralty here it was established by Coll. Fletcher by virtue of a warrant from the Lords of the Admiralty impowering him to appoint a Judge, Register and Marshall for the Court of Admiralty. After that in my Lord Bellamont's time there was a commission from the Lords of the Admiralty appointing Coll Smith Judge of the Admiralty here, and since that Mr Atwood brought over with him a Commission from the Lords of the Admiralty constituting him Judge of that Court."

William Smith, who was appointed judge of the court in

^{33. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. IV, p. 1000.

1697, described the method of admiralty proceeding in a communication which he made to the Earl of Bellomont. He said that "in the Court of Vice Admiralty here we have in all things as near as possible followed the proceedings of the Admiralty Court in England save only where greater power is given here in the plantations by act of parliament to the Admiralty, than allowed of or practicable in England which hath been duly observed in my administration in that Court in this province." ***

In 1763, the fourth year of the reign of King Charles II., an act of parliament was passed relative to trade in the American colonies and plantations. The forty-first section of this act directed:

"That all the forfeitures and penalties inflicted by this or any other act or acts of Parliament relating to the trade and revenues of the said British Colonies or Plantations in America which shall be incurred there, shall and may be prosecuted, sued for and received in any Court of Record or in any Court of Admiralty in the said Colonies and Plantations where such offense shall be committed, or in any Court of Vice-Admiralty which may or shall be appointed over all America (which Court of Admiralty or Vice-Admiralty is hereby respectively authorized and required to proceed, hear and determine the same) at the election of the informer or prosecutor."

This action of the British parliament created great dissatisfaction among the colonists. The opposition to the king's prerogative in establishing and directing the administration of the courts had developed to an acute point during the preceding half century, and was no more tolerable to the citizens of the later period than it had been to their ancestors, when the courts were first established in the early years of the century. On October 18, 1764, the general assembly, giving voice to the popular

^{34. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. IV, p. 828.

opinion, petitioned the king in regard to this matter, and also at the same times communicated to the house of lords and the house of commons its opinions in regard to the matter. The petition to the king said that:

"The unavoidable delegations of the royal authority which necessarily expose us to the designs of wicked men leave us neither rest nor security, while a custom house officer may wantonly seize what a judge of your Majesty's Court of Vice-Admiralty may condemn in his discretion, or at best restore to the honest proprietor without a possibility of a restitution for the injury."

. The communication to the house of lords said among other things:

"That the amazing powers vested by some of the late acts of trade in the Judges of the Vice-Admiralty Courts, who do not proceed according to the course of the common law, nor admit of trials by juries, one of the most essential privileges of Englishmen, has so unfavorable an aspect on the property of the subject, that we could not consistent with out duty suppress our apprehensions."

The petition to the commons said:

"We cannot stifle our regrets that the laws of trade in general change the current of justice from the common law, and subject controversies of the utmost importance to the decisions of the Vice-Admiralty Courts who proceed not according to the old wholesome laws of the land, nor are always filled with judges of approved knowledge and integrity."

Admiralty jurisdiction in the colony extended to decisions in all maritime causes. Proceedings in the court were the same as in the high court of admiralty in England. The court particularly tried cases and rendered decisions as to whether captures and hostilities between Great Britain and other powers were legal prizes.

The officers of this court from the time of its beginning in 306

1684 to the breaking out of the revolution were: Advocate-Generals: John Tuder, 1684; Jacob Milborne, 1690; the Attorney-Generals, *ex officio* after 1700.

Registers: Samuel Leete, 1675; William Nicoll, 1683; John Spragge, 1684; George Brewerton, 1690; John Tuder, 1691; William Sharpas, 1696; John Tuder, 1697; Robert Robinson, 1709; Richard Nicoll, 1773; John McKesson, 1776.

Judges: Stephen Van Cortlandt, 1678; Thomas Delavall, 1679; Lucas Santen, 1683; John Palmer, 1684; Matthias Nicolls, 1686; Peter De La Noy, 1690; Joseph Dudley, 1691; Thomas Johnson, 1691; William Smith, 1693; William Pinhorne, 1696; William Smith, 1697; William Attwood, 1701; John Bridges, 1702; Roger Mompesson, 1703; Caleb Heathcote, 1715; Francis Harrison, 1721; Daniel Horsmanden, 1736; Lewis Morris, 1760; Richard Morris, 1762; Lewis Morris, 1776; Lewis Graham, 1776.

In the early Dutch period, the exercise of judicial power in relation to the succession of estates, real or personal, and the settlements of the affairs of those who had died intestate, was according to the Dutch Roman law, the customs of Amsterdam, and the ordinances of New Amsterdam. Authority in this respect was vested in the director general and his council, or the vice-director and the *schout-fiscal*. Subsequently, cases of this kind came before the court of which the vice-director was a judge and the councilors were members, and where occasionally the director general presided. Particular attention was given to guarding the interests of widows and orphans. The deacons of the Reformed Church acted as orphan masters, and it was part of their duty to notify the director of the decease of any member of the commonalty, in order that the estate could be looked after

and the interests of the heirs protected. When the city of New Amsterdam was incorporated, the duties which before that time had been discharged by the deacons of the church and the director general and his council, were transferred to the board of burgo-masters and schepens. All powers of probating wills, granting letters of administration, appointing curators to take charge of estates of widows and children, appointing executors and administrators, and reviewing the accounts of executors were exercised by this court; but there was an appeal to the governor and council.

At the second meeting of this board, February 10, 1653, a request to the director was drawn up that two orphan masters should be provided, and for this position there were placed in nomination Paulus Leendersten Van der Grift, William Beeckman, Oloff Stevensen Van Cortlandt, and Cornelis Steenwyck, from whom the director might choose two. A month later the director and council, taking cognizance of this action, refused to accede to the request on the ground that the city was not yet able to incur the necessary expense, and decided "that the deacons shall keep their eyes open and look as orphan masters after widows and orphans." Again, on October 18, 1655, the burgomasters and schepens renewed their appeal and petitioned the director general and council as follows:

"That by daily experience through requests to us we find, that there are now in this City widows and orphans who we think should be taken care of, that their means and property be well administrated and made use of. In obedience to our instructions we therefore request your Honours, that following the customs of our Fatherland you will appoint some persons to the office of Orphan Masters, for which we propose a double number, from whom your Honours will please to select and appoint a single one." ³⁸

^{35. &}quot;Records of New Amsterdam", vol. I, p. 380.

With this petition four names were submitted: Pieter Wolfertsen Van Couwenhoven, Hendrick Hendricksen Kip, Pieter Cornelissen Van der Veen and Jacob Steendam. A month later, November 19, 1655, the director general "selected and confirmed as overseers of orphans" Pieter Wolfertsen Van Couwenhoven and Pieter Cornelissen Van der Veen.

The burgomasters and schepens still sat as judges of the orphans court until early in 1656, when they presented another remonstrance to Stuyvesant:

"That the labours and cares daily occurring in their offices are increasing so much, that it is inconvenient, to attend as well to the duties of orphanmasters as they would like to do; they therefore request, that two worthy and respectable men be authorized and appointed, whose duty it shall be, to look after the orphans and infant children, living in the jurisdiction of this City, to administer upon their property in and without the city and oversee such administration by others." ³⁶

In answer to this, Stuyvesant appointed as orphan masters Paulus Leendersten Van der Grift and Pieter Wolfertsen Van Couwenhoven, Oloff Stevensen Van Cortlandt, Wilhelmus Beeckman, Martin Krieger, Johannes Pietersen Ven Brugge, Allard Anthony, Johannes de Peyster, Cornelis Steenwyck, Johannes Van Brugh, Govert Loockermans and Jacob Strycker. Pieter Wolfertsen Van Couwenhoven served seven terms during this period of twelve years, his last appointment being in 1662. At Fort Orange, where there was a separate court, the duties of the orphan master were discharged in 1652 by the vice director ex officio, and in February, 1652, Jan Verbeeck and Evert Wendel were appointed to the office.

Some of the probate proceedings at this time will serve to illustrate how tenaciously the Dutch clung to the old forms of

^{36. &}quot;The Minutes of the Orphanmasters of New Amsterdam", p. 14.

ceremonies to which they were accustomed in the fatherland. Where a widow, to relieve herself from certain obligations, desired to renounce her husband's estate, it was in all cases recorded that the intestate's estate "has been kicked away by his wife with the foot," and that she has duly "laid the key on the coffin." On September 10, 1664, William Doecklef, appeared before the court and declared his intention to marry Annetje Ryzens, widow of Solomon La Chair. At the same time he represented that the estate left by the above mentioned Solomon La Chair was indebted more than was due it, and therefore he announced that his intention was to abandon it, while the prospective bride stated that "she too pushed it with her foot."

It was the custom to grant a commission to trustees to settle an estate, the debts of which exceeded the assets. Then the right to succession or inheritance might be relinquished and the heir or widow relieved of any claim by creditors. A commission in a case of this kind read:

"Herman Jacobsen Bamboes has been lately shot dead murderously by the Indians and whereas the Estate left by him has been kicked away by his wife with the foot, who has laid the key on the coffin; therefore it is necessary to authorize and qualify some persons to regulate the same in order that the interested, or the creditors may obtain their own."

When, under the English, the mayor's court succeeded to the court of burgomasters and schepens, the orphan masters went out of office, and the new court exercised the jurisdiction which formerly belonged to them; and in respect to testamentary matters and intestate estates the court of common pleas also exercised this jurisdiction. Outside of New York, the courts of sessions had this authority in the first instance.

Under the Duke's Laws, established by Governor Nicolls,

^{37. &}quot;Records of New Amsterdam", vol. VII, p. 188.

it was provided that in every town the constable and two overseers should take inventory and appraise the property of the
deceased individual, and make returns thereof under oath to the
court of sessions. The probating of wills, the granting of letters of administration, the final accountings, the removal of executors, the appointing of guardians to children, and other matters pertaining to the settlement of estates, came before the
courts of sessions in the several ridings and the mayor's courts
in New York and Albany.

When an estate was valued at over one hundred pounds, it was required that a certificate should be forwarded to the secretary of the province in New York, where it would be recorded, and where letters testamentary and of administration and the final discharge of executors or administrators (which was called > a quietus) were granted by the governor under the seal of the Proof of proceedings in first instance, before the courts of sessions or the mayor's courts were transmitted to the governor, and the act of the governor was only a formal ratification of the action of the lower courts. In some instances the governor gave his judgment upon the construction of a will, and Governor Andros granted letters without any proceedings in court, but these were exceptional instances, and of rare occurrence. In all proceedings before them, the courts of sessions had the power of granting a rehearing, or, as it was called, a "review", and, upon such review, might in their discretion admit new evidence a power, however, which was not continued in the courts which succeeded in 1691 to the civil jurisdiction of these tribunals.

This practice continued until 1686. After that, according to instructions issued first to Governor Dongan and then to Governor Sloughter, there was a change in method. The courts of

sessions and the mayor's courts exercised the same functions as before, but the governor and the secretary of the province also took proof of the execution of wills and directed the inventory and appraisement of estates. The scope and the authority for this procedure was clearly indicated in 1691, under Lieutenant Governor Ingoldesby, when a clause in all letters granted declared that the hearing of accounts, the granting of probates, the discharge of executors and all cognate matters belonged to the governor, and not to the inferior judges.

Wills were proved by the secretary, and he annexed a certificate that "being thereunto delegated" the will had been duly proved before him. Then an authentication, in the name of the governor, in the form that continued in use down to the time of the "Revised Statutes, that the will had been proved, approved and allowed," under the prerogative seal, was annexed, and the whole was recorded in the secretary's office—the validity of the record being attested by his signature. Gradually this department in the secretary's office assumed great importance, and ultimately it became known as the prerogative office, while its records were named the registry of prerogatives. In 1691 the entire institution was denominated the prerogative court.

An act of the assembly in 1692 provided that all wills and letters of administration should be granted by the governor or by some person or persons in the prerogative office, to whom the governor had delegated this duty, and that in each town two free-holders should be "elected and appointed" to have charge of the estates of persons who died intestate. It was further ordered that all wills relating to estates in New York, Orange, Richmond, Westchester and Kings counties, should be proved in New York. In counties further removed from New York, the courts of common pleas were authorized to take the necessary proof

and to send the papers to the probate office in New York for record. In 1750 the court of common pleas in Orange county received a similar authorization, and later the authority was extended to cover other northern counties. Where the estate was under £50, the courts of common pleas were authorized to admit the will to probate, or to grant letters of administration, and from their decision an appeal was allowed to the governor, or to the person he might delegate to act for him. In the letter written by Matthew Clarkson, the secretary of the province, to the lords of trade, in 1693, this jurisdiction is explained: "The governor discharges the place of the ordinary (the bishop) in granting administration and in proving wills, and the secretary of the province acts as registrar."

The secretary of the province was an officer in a certain measure independent of the governor, being appointed by the crown, and he had a deputy. Governor Fletcher appointed this deputy, as his delegate, to take the proof of wills, which in turn presented to the governor were allowed by him. In 1702, Governor Cornbury appointed as his delegate Doctor John Bridges, who not long after became chief justice of the supreme court. Doctor Bridges, in the name of the governor, took proof of wills, and also swore in the executors and administrators, took proof of inventories, and otherwise exercised surrogate jurisdiction. Upon his certificate, the deputy secretary of the province granted letters. Bridges was the first official to make use of the surrogate title. After he became chief justice, Cornbury appointed the deputy secretary as his delegate, and with only incidental exceptions, this practice was continued, until the time of the revolution.

The rule of having all wills proved in New York city, resulted in exceeding inconvenience to citizens of the colony resid-

ing at a distance. Travel was difficult in those days, and it was a hardship to those concerned in the estates of decedents thus to comply with the law. Accordingly, Cornbury at first, other governors afterward following his example, appointed delegates for the distant counties of the colony, and also a local delegate for the city and town of New York, the latter being an appointment entirely distinct from the secretary or the deputy secretary. This arrangement was intended, in conformity with the instructions which accompanied the commissions of the governors, to carry out the distinct jurisdiction exercised in England by the commissaries of the bishop diocesan and the ordinary or delegate of the Archbishop of Canterbury, which was then known as the court held by the commissary of the bishop, and the prerogative court held by the delegates of the archbishop or metropolitan, so as to make the practice in New York follow as much as possible that in England.

If the deceased had "goods, chattels, and property in divers places within the province", then the governor exercised exclusive jurisdiction, but if the goods of the deceased were comprised in one county only, the will would be proved by the governor's delegate and then taken to the prerogative court, and the records copied in the registry of the court. Letters of administration, and all matters pertaining thereto were granted only in the prerogative court, and the same court had power to grant marriage licenses and licenses to school masters and to record the installation of clergymen. The delegate of the governor in this prerogative court, was the secretary of the province or the deputy secretary. The local delegate appointed by the governor for New York City, like the local delegates appointed for the smaller towns, had no such powers as the general delegate or the delegate of the governor. At first the local delegate bore

only the name of delegate, but in 1746, many of them began to assume the title of surrogate, and not long thereafter all were so designated in the commissions which were issued to them.

In 1743 an act was passed for the more speedy recovery of legacies. By this act any person entitled to a legacy or a residuary estate under a will, or to any share in the estate of an intestate, might bring an action against the executors or administrators, after it became due, or, if no time was fixed by the will, after a year had expired, to compel its payment, in the supreme court or any court of record, if it amounted to more than 20 pounds, or if under that sum in a court of common pleas. If a plea of want of assets was put in, the court was empowered to appoint auditors to examine the accounts of the executor or administrator, who were to report how the account stood, and what sum would remain after the payment of debts, and to what portion the plaintiff was entitled. The court was empowered to correct any mistakes or errors in the accounts reported, and for the amount found to be due the plaintiff had execution, which act continued in force down to the Revised Statutes. This act and the general jurisdiction exercised by the court of chancery in such cases, furnished a more effectual and more expeditious remedy than the prerogative court could afford. Naturally therefore the practice of accounting in that court gradually fell into disuse, except when an executor or administrator filed his account with the view of obtaining his discharge. time the common law courts were but rarely resorted to, as the remedy in equity was more efficient and better adapted for adjusting the rights of all parties.38

^{38.} A comprehensive and learned account of the prerogative jurisdiction was given by Judge Charles P. Daly, of the court of common pleas, sitting as a surrogate in the matter of the estate of Joseph W. Brick, November 26, 1862. 15 Abbott's Practice, Rep. 12.

Beginning with 1692 the registers and principal surrogates during the colonial period were: the secretary of the province, 1692; Stephen Van Cortlandt, 1696; the council or any three of them, 1702; John Bridges, 1702; George Clarke or his deputy, 1703; S. S. Broughton, 1704; Thomas Wenham, 1705; Isaac Bobin, 1731; Goldsborow Banyar, 1753; John Godby, 1754; Goldsborow Banyar, 1762; John Feench, 1766; Francis Child, deputy, 1768; Philip Livingston, 1768; Francis Child, deputy, 1769; Goldsborow Banyar, 1769; Edmund Faning, 1771, and Samuel Banyar, Jr., 1774.³⁹

It has been stated⁴⁰ that for more than one hundred years before the adoption of the first constitution of New York, and for many years thereafter, judicial dissolution of marriage was unknown. It was not until 1787, that the legislature authorized the court of chancery, which had then been newly elected, to pronounce divorces a vinculo, but then only in cases of adultery. Previous to that time, the only means of affecting a divorce was by a special act of the legislature.⁴¹

Nevertheless there is abundant evidence that during the Dutch period, and the first period of the English colonial time, preceding the revolution of 1688, divorce by a decree of the governor or by other authorities was not unknown. The Dutch law allowed divorce for adultery, and such divorces were granted by the courts of *burgomasters* and *schepens*. Several cases may be cited in point. Daniel Denton, whose history of the colony was one of the first and best works of its kind, went from

^{39.} Messrs. Broughton, Wenham, Bobin, Banyar and Godby were deputies to George Clarke.

^{40. &}quot;History of the Bench and Bar of New York," p. 78.

^{41.} Kent's Commentaries, vol. II, p. 97.

Jamaica to London, to secure the publication of his book. Upon returning to his home, in this country, he found that his wife, Abigail Denton, had been unfaithful to him, and he applied to the court of sessions for divorce. That court decided that it had no jurisdiction, and the case was brought before the governor and council. The governor—Lovelace—and council decided that it was conformable to the laws of the colony and consistent with the civil laws, and in consonence with the laws of the English that the marriage could be dissolved upon proof of adultery, and he sent the case back to the lower court to take proof. The governor could scarcely take this action, if he cared to act legally, except upon the theory that the Dutch-Roman law allowing judicial divorce had survived the taking of the colony by the English, and, as he said, was not repugnant to the English law, which was then the law of the colony.

On March 1, 1674, at the meeting of the governor general and council, this being during the short administration of Colve, the case of Ralph Day and his wife who was Mary Van Harris was brought up. In their decision, the governor general and council

"Declare the marriage contracted by the Deft with Mary Van Harris on the 5th of February last, to be unlawful, inasmuch as it was solemnized by Jacobus Fabricius, who had no legal power so to act and without his engagement having been published three several times according to the laws & customs of the government; but finding the charge against him of having a second wife in New England unfounded, he is therefore permitted to confirm himself in wedlock with the above named Mary, according to the laws of the government."

On April 12, of the same year, at the council meeting:

^{42. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. II, p. 692.

"Catrina Lane, requesting by petition, letters of divorce and separation from her husband Daniel Lane, as her said husband had been accused of, and arrested for committing and perpetrated incest with his own daughter, and without clearing himself thereof hath broken jail and absconded; which being taken into consideration by the Governor-General and Council of New Netherland, they have ordered as follows:

"In case Daniel Lane, the Petitioner's husband, do not present himself in Court, within the space of six months from date hereof and purge himself from the crime of incest with which he is accused, Letters of Divorce and Separation shall be granted to the Petitioner." ⁴⁵

In the October following the granting of divorce to Daniel Denton in 1672, the court of assizes allowed the wife of Denton to marry again. In October, 1670, the court of assizes granted to Rebecca Leveridge, a divorce from her husband, Eleazer Leveridge for his alleged impotency.⁴⁴ In the same month the governor and council granted a divorce to Thomas Pettit from his wife Sarah Pettit on the ground of adultery, and a divorce to Mary Cole from Samuel Sutton, on the ground of bigamy of the defendant.

That there was a need of jurisdiction upon this subject does not admit of doubt, and the lack seems to have been deplored, for the parties desiring divorce were compelled to resort to the courts of England. Writing in 1769, Lieutenant Governor Cadwalader Colden said that the power to grant divorces, which the early governors of the province had assumed had fallen into disuse after the revolution of 1688, and that there was no court that could give this remedy to ill-assorted couples. At the same time he remarked that "in neighboring colonies, a divorce is more easily obtained than perhaps in any other Christian country," and he says further

^{43. &}quot;Documents Relative to the Colonial History of the State of New York," by E. B. O'Callaghan, M. D., LL.D., vol. II, p. 704.
44. "History of Long Island," by B. F. Thompson, vol. I, p. 256.

"Query whether this may not be for the advantage of the new country, which once peopled, it is certain that the natural increase of people in New England has been very great, perhaps more than in any of the other English colonies."

^{45.} Colden's Letters in "Publications of the New York Historical Society," 1868, p. 187.



CHAPTER VIII

The Beginnings of State1100D







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ALEXANDER HAMILTON.

(1757-1804).

Lawyer, Soldier and Statesman; served on Washington's staff; Member of Continental Congress; Member of Assembly; Delegate to Convention which framed United States Constitution; Secretary of the Treasury in Washington's Cabinet; declined office of Chief Justice of United States.

CHAPTER VIII

THE BEGINNINGS OF STATEHOOD

1778—1847

REORGANIZATION AFTER THE CLOSE OF THE REVOLUTION—A

JUDICIARY SYSTEM UNDER THE STATE GOVERNMENT ESTABLISHED ON A CONSTITUTIONAL BASIS—SOME COURTS CONTINUED AS THEY WERE IN THE COLONIAL PERIOD—SEVENTY
YEARS OF A GREAT COURT OF CHANCERY—THE FAMOUS CHANCELLORS AND THEIR CAREERS—AN ADMIRALTY COURT FOR A
FEW YEARS—GRADUAL EVOLUTION OF A NEW COURT OF
APPEALS—OTHER COURTS IN THE FIRST HALF OF THE NINETEENTH CENTURY.

When the War for Independence broke out in 1776, the courts then in existence were the justices' courts, the courts of sessions and the courts of common pleas, the supreme court, the court of admiralty, the prerogative court, the court of the governor and council, and the court of chancery. The character of these courts and the powers which were accorded to and exercised by them, have been fully described in preceding chapters of this work.

No sooner had the open revolt of the colonists practically severed them from English domination, than the power of these courts naturally became nugatory. Only in those sections where the royalist rule was still in force had they any standing. This was mostly in New York City and Westchester county. Elsewhere the colonists refused to recognize them, and generally throughout the Colony, which was soon to become a State, there

was merely a rudimentary exercise of legal authority and an informal recognition of the restrictions of law in the conduct of affairs of everyday life. In some communities courts were temporarily instituted, but for the most part their activity was confined to the hearing of complaints against suspected Tories, and the inflicting of such punishments upon them as the public spirit of the time and place most favored.

Such a chaotic condition could not be expected to continue indefinitely, and therefore one of the most important things to the consideration of which the Constitutional Convention of 1777 was compelled to address itself, was the reinstatement of the rule of law and order, and the establishment of courts. The convention recognized the colonial courts already in existence, with the exception of the prerogative court and the court of the governor and council. Other courts were continued under the same names that they had before borne, practically in the same form, and with the same powers and jurisdiction. There was this important difference in them, however: heretofore, while they had been in a measure the creatures of the legislature of the province, they had really existed only under the authority and control of the King's prerogative, as represented in his governor and council of the Province. From this time on, however, they had a constitutional foundation and existence, having been brought into power directly by the representatives of the people, and being responsible only to the people through the executive and legislative officials of the State. It was an independent judiciary of popular and democratic character, and forever emancipated from anything that savored of foreign or extraneous origin or control.

It was early deemed necessary to free the new courts from all influence that might in any degree be suspected of Toryism. Almost immediately after they had been established, measures

to that end were taken. Many of the prominent attorneys and counsellors-at-law had either sided with the Crown, or at least were known to be lukewarm toward the Colony, and they were looked upon with much disfavor by the patriots. Accordingly, an act was passed in 1779 which recited that many persons had been licensed to plead and practice as attorneys, solicitors, and counsellors-at-law in the several courts of law and equity within the State, while the same was under the government of the king of Great Britain, as the Colony of New York, and that, regardless of the duty which they owed to their oppressed country, some of them had gone over to and put themselves under the protection of the armies of the King, while others had conducted themselves in such a neutral or equivocal manner as had justly rendered them suspected of disaffection to the freedom and independence of the State. The act further declared that it would be inconsistent with the welfare of the State that such persons should be allowed to plead and practice in any courts within the same, and that, as the constitution had made subject to the rules and orders of the supreme court only such attorneys, solicitors and counsellors-at-law as should thereafter be appointed, the act suspended all licenses to plead or practice granted to attorneys, solicitors and counsellors-at-law before the twenty-first day of April, in the first year of the Independence of the State.

The act also provided that persons so suspended were entitled to have a writ of inquiry into their political character issued to the sheriff of the county. The sheriff thereupon summoned a jury, which was directed to inquire whether the person suspended had uniformly and consistently conducted himself as a good and zealous friend of the American cause. If it appeared that he had so conducted himself, he was restored to his full privileges as an attorney, solicitor, and counsellor-at-law. By chapter 13

of the Laws of the Fifth Session, this act was modified somewhat so that the attorney general was entitled to notice of the time and place of the execution of the writ of inquiry.

In 1779 an act was passed by the Legislature, creating a council or committee for the southern part of the State. That part of the State was then in possession of the royalists. This council consisted of the governor, the members of both houses of the legislature, the chancellor, the justices of the supreme court, the attorney general of the state, and the county judges. It was provided that any seven members of this council, of whom the governor should be one, might act in control of the affairs of that part of the State for sixty days after the convening of the council. When the British troops had departed from New York city in 1783, this council was organized and continued in session until the assembling of the legislature in February of the succeeding year. Various ordinances were enacted by it, and these were subsequently ratified and made legal by the legislature.

When the whilom Colony became a State, its population, white and black, was about 175,000. It was divided into twelve counties—Suffolk, Queens, Kings, Richmond, New York, Westchester, Dutchess, Cumberland, Gloucester, Charlotte, Orange, Ulster, Albany, and Tryon. New York county was not the largest, although it was the commercial center. Albany county had 42,706 inhabitants, Dutchess 22,404, while New York had but 21,863. The constitution of 1777 gave Albany county ten members of the assembly, New York nine, Dutchess seven, and Westchester six. The only newspaper outside of the city of New York was the *Gazette*, which was established in Albany in 1771. There were few roads, most of them poor, and means of communication were so slow that news of the battle of Lexington did not reach the city of New York until the 24th of April. The





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SAMUEL BLATCHFORD.

(1820-1893).

Lawyer, Law Reporter and Jurist; law partner of William H. Seward; Judge United States District Court, Southern District of New York, 1867-78; Circuit Judge for Second Circuit, 1878-82; Associate Justice United States Supreme Court, 1882-93.

inhabitants were mostly of Dutch origin, although there were many settlers of English descent, notably in Suffolk county.

An act passed by the legislature in May, 1778, gives a good idea of the primitive condition of the country at this time. was entitled, "An Act to ascertain the places from whence the mileage fees of the respective sheriffs of the several counties in the state shall be computed." The act provided, "That the sheriff of Suffolk County shall compute his fees from a path commonly known as the Wading River Path, about seven miles to the westward of the County Hall in said County, at the junction of said path with the County Road which passes through Nassau Island, about the middle thereof; the sheriff of Queens County from a certain pond commonly called Wind Mill Pond, near the north side of Hempstead Plains; the sheriff of Dutchess County from the house wherein Myndert Vielle, Esq., now lives in Beekman's Precinct; the sheriff of Westchester County from the house of William Ogden in North Castle; the sheriff of the County of Ulster from the house of Mrs. Ann DuBois, in the neighborhood of the mountain called Anthony's Nose in said County; the sheriff of the County of Charlotte from the meeting-house in the town of New Perth, and the sheriff of the County of Gloucester from the meeting-house in the town of Newbury in said County."

Notwithstanding the professional and popular opposition to the court of chancery during the colonial period, a court of that character was considered to be necessary under the democratic State government. In the first constitutional convention this court was recognized as being then in existence, and Robert R. Livingston was appointed to be the first chancellor of the State.

Robert R. Livingston was a member of the celebrated New York Livingston family, a great-grandson of Robert Livingston, the founder of the family in America. His grandfather, Robert

Livingston, was a lawyer of the colonial period, and his father, Robert R. Livingston, was a judge of admiralty in 1760; a justice of the Provincial supreme court, 1763; a member of the Provincial Congress from Dutchess county, 1759-1768; and otherwise prominent in the public affairs of the period in which he lived.

Robert R. Livingston, the second of the name, was born in New York City, November 27, 1746, and died at the Livingston county seat, Clermont, New York, February 26, 1813. He graduated from Kings College, now Columbia University, in 1765, and was admitted to practice law in 1773, beginning in partnership with the distinguished John Jay. For a time he was recorder of the city of New York until he was displaced by loyalist influence. In 1775 he was a member of the Provincial Assembly, and subsequently a delegate to Congress. In 1776 he was a member of the committee in Congress which drew up the Declaration of Independence. His name was not appended to that great paper, for the reason that he was called to other duties as a member of the New York Provincial Congress. Prominent in the New York State Convention of 1777, he was elected the first Chancellor of the State, and held that office until 1801. During part of this time, 1799-1781, he was a delegate to the Continental Congress. From 1781 to 1783 he was Secretary of Foreign Affairs, and in 1788 was chairman of the New York Convention which ratified the Federal Constitution. When Washington was first inaugurated President of the United States, Livingston administered the oath of office to him.

Resigning his chancellorship in 1801, he was appointed Minister to France by President Jefferson, and in 1803 was instrumental in effecting the purchase from France of the Louisiana Territory, the most important transfer of territory ever made by





Robert R. Livingston

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A STREET, SQUARE, NAME OF

ROBERT R. LIVINGSTON.

(1746-1813).

Jurist, Statesman and Diplomat: Recorder of New York; Member of Assembly: Delegate to Continental Congress; Secretary of Foreign Affairs under Confederacy; Member of First Constitutional Convention of New York; first Chancellor of New York; Minister to France.

the United States. He became interested with Robert Fulton in the subject of steam navigation, and was associated with him in the building of the celebrated "Clermont" steamer. During the concluding portion of his life he was engaged in agricultural pursuits, and wrote much upon that subject. Later generations have not been able to profit by his opinions as chancellor, for the practice of handing down written opinions had not been adopted in his time; and he has left nothing that would enable us to guage his ability as a jurist. Considering his high standing as a lawyer and as a statesman, it is safe to say that his opinions were of undoubted importance and value. Thomas Jefferson wrote of him, "Robert R. Livingston is, in every sense of the word, a wise, good and great man, one of the ablest of American lawyers and statesmen."

"Decisions of Chancellor Livingston bearing on jurisprudence and preserved in the records of the council of revision, indicate the same qualities which so distinguished his career as a statesman and diplomat."

As has been seen, the chancery court had fallen largely into disuse in the later years of the colonial period, and it does not appear to have had any considerable amount of business even during the early part of its career under the Constitution of the State. Probably very little if any business was transacted in it during the revolution. It was evidently impossible for Livingston, the first chancellor, to do much court work while the city of New York was in the hands of the British and the country outside was in a state of disturbance. And then, also much of the time he was engaged as Secretary of Foreign Affairs for the United States, 1781-1783, and that necessarily took him from the

^{1. &}quot;Observations on the Particular Jurisprudence of New York," by Robert Ludlow Fowler, in "Albany Law Journal", vol. XXIII, p. 287.

exercise of court duty. After peace had been declared in 1783. he was reappointed to the chancellorship, for the reason that some doubt had arisen as to the validity of his having held the office during the time that he was otherwise in public service as Secretary of Foreign Affairs. Work in the court undoubtedly commenced soon after this time, but the records of it do not date back earlier than June, 1785.2

The first court recorded in the minutes which have been preserved, was held in the city hall in the city of New York, and the first case appearing in the records was that of Thomas Bardill vs. Lambert Moore. In all, six cases came before the court on that day. On the twenty-eighth of June, the court was held at Clermont, in the manor of Livingston, and on the twenty-eighth and twenty-ninth of the ensuing month, it was held in the city of Albany. In August there was a session in Clermont, but on the first day of the ensuing October the court sat again in New York. Among the counsellors who appeared before the court were Morgan Lewis, Robert Troup, Brockholst Livingston, Alexander Hamilton, Aaron Burr, John Lansing, Egbert Benson and Edward Livingston.

On December 7, 1785, at the court held in the chancellor's chambers in the city of New York, Chancellor Livingston ordered "Mr. John Lansing to transmit to the registry of the court all the rules of this court as were in his possession, together with all other papers belonging to the court." Whatever rules may have been then in existence would appear to have been those of the court in its colonial existence. The first rules relating to the court under the state government were made by Chancellor Livingston in 1787.3

 [&]quot;Minutes of the Chancery Court," June, 1785, to April, 1789.
 "Minutes of the Chancery Court", vol. III.

By the legislative act of May, 1778, masters and examiners were appointed by the council of appointment, while the register and the clerks received their appointment from the chancellor to serve during pleasure. In 1804, the office of assistant-register was established in New York.

John Lansing, Jr., who at the time, was chief justice of the supreme court, was promoted to fill the position vacated by Chancellor Livingston in 1801, and he retained the office until October, 1814, when by reason of age he became non-eligible for further service on the bench. Lansing was born in Albany, January 30, 1754, was graduated from Kings College, and then read law with Robert Yates in Albany, and James Duane in New York City. He began the practice of law in Albany; from 1780 to 1784 was a member of the Assembly, from that city; from 1784 to 1786 was a representative to the Continental Congress; in 1786 was speaker of the New York Assembly, and in the same year was mayor of Albany; in 1787 was again a delegate to the Continental Congress and a delegate from New York to the convention to formulate a Federal Constitution; and in 1788 was a delegate to the New York convention called to ratify the Federal Constitution. From 1788 to 1798 he was one of the justices of the supreme court of New York, and was the chief justice of that court from 1798 to 1801, when he was appointed chancellor to succeed Livingston. He retired in 1814.

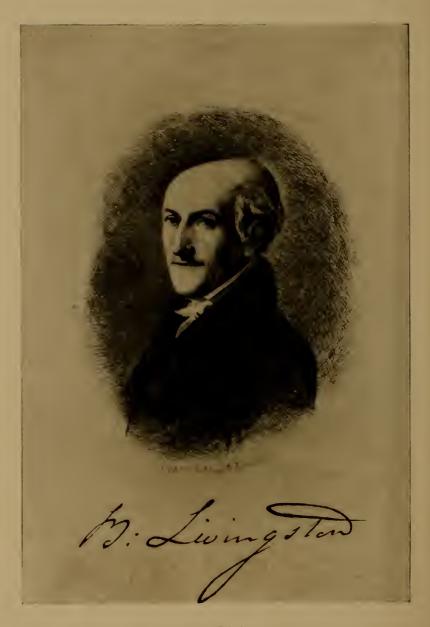
While sitting as Chancellor, Lansing took part in the cause celebre of "the matter of Yates". One of the rules of the Chancery Court required solicitors to bring equity suits in their own names, and not in the name of another solicitor. John Yates, a prominent member of the Albany bar, but not a solicitor in chancery, commenced through a chancery solicitor a suit in Lansing's court. As soon as the chancellor discovered that Yates

was not a member of his bar, he committed him to jail for contempt. Yates retained Thomas Addis Emmet, who applied to Ambrose Spencer, one of the justices of the supreme court, for a habeas corpus. This being granted, the prisoner was set free. Lansing again committed him to jail, notwithstanding the former release. Emmet applied to the supreme court in banc for another habeas corpus, which was denied by a divided court. Emmet took the case to the court for the correction of errors, and the supreme court was reversed and Yates was freed; then he brought an action for damages against the chancellor, but in this he was defeated, it being decided that a judge was not individually liable for his judicial acts.

Chancellor Lansing mysteriously disappeared in 1829, and his disappearance has always been one of the unsolved mysteries of New York City. He had come from Albany, and was stopping at the City Hotel, on Broadway, where he breakfasted and dined at midday. Shortly after dinner he was observed to leave the hotel supposedly for the purpose of mailing letters. From that moment he was never seen or heard of again. What became of him has never been discovered to this day. Lansing's opinions are in the same category as those of his predecessor. As yet there were no court reporters, and such opinions as were delivered did not survive the recollection of the hour.

Chancellor James Kent, who succeeded Lansing in 1814, ranks among the very first of American jurists. He was born in Putnam county, New York, July 31, 1763, and died in New York City, December 12, 1847. He descended from the famous Kent family of Connecticut, and his father, Moss Kent, who was surrogate of Rensselaer county, New York, died in 1794. James Kent was graduated from Yale College in 1781, and the same year began the study of law with the celebrated Egbert Benson,





Brockholst Livingston

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BROCKHOLST LIVINGSTON.

(1757-1823).

Son of Governor William Livingston, of New Jersey, and brother of Robert R. Livingston, Chancellor of New York; sol dier in Continental Army in Revolutionary War, attaining the rank of lieutenant-colonel; Justice Supreme Court of New York, 1802-7; Associate Justice United States Supreme Court, 1807-23.

the first attorney general of the State, and at that time the acknowledged leader of the New York bar. In 1785 he was admitted to the bar as an attorney, and in 1787 as counsellor. After two years' practice in Poughkeepsie, he was elected to the State Legislature in 1790, and re-elected in 1792 as a Federalist. In the latter year he took prominent part in the contest for the governorship between John Jay and George Clinton, favoring the election of the former.

Removing to New York City in 1793, he quickly took a position in the foremost ranks of the bar of that city, which then included such eminent lawyers as Aaron Burr, Alexander Hamilton, Josiah Ogden Hoffman, Brockholst Livingston, Egbert Benson and James Duane. He was appointed a Master in Chancery for the city of New York, and was also a professor of law in Columbia College. After serving another term in the legislature he became Recorder of the city of New York in 1797, but in less than a year resigned that position to accept an appointment as justice of the supreme court, to succeed John Lansing, being made chief justice of that court in 1804. He served upon the bench of the supreme court until he was advanced to the chancellorship in 1814. Already in the supreme court he had introduced the practice of handing down written opinions, and he carried that practice with him to the chancery court. diately after his appointment as chancellor, he secured from the legislature the passage of an act providing for a reporter of the chancery court, and William Johnson was selected to fill that position. Johnson had been a reporter of the supreme court while Kent sat as chancellor.

The condition of chancery jurisprudence in America, and especially in New York, and the methods pursued by Kent in de-

termining and administrating the law, were well summoned up by him as follows:

"For the nine years I was in that office there was not a single decision. opinion, or dictum of either of my two predecessors cited by me, or even suggested. I took the court as if it had been a new institution and never before known in the United States. I had nothing to guide me, and was left at liberty to assume all such English chancery powers and jurisdiction as I thought applicable under our constitution. This gave me grand scope, and I was only checked by the revision of the senate or court of errors. I opened the gates of the court immediately, and admitted almost gratuitously the first year sixty-five counsellors, though I found there had been but thirteen admitted for thirteen years before. Business flowed in with rapid tide. The result appears in the seven volumes of Johnson's 'Chancery Reports.' My course of study in equity jurisprudence was very much confined to the topics elected by the cases. I had previously read the modern equity reports down to that time, and of course I read all the new ones as fast as I could procure them. I remember reading Peere Williams as early as 1792, and made a digest of the leading doctrines. I always took up the cases in their order, and never left one until I had finished it. This was only doing one thing at a time. My practice was first to make myself perfectly and accurately (mathematically accurately) master of the facts. It was done by abridging the bill, and then the answer, and then the depositions, and by the time I had done this slow and tedious process, I was master of the case, and ready to decide it. I saw where justice lay, and the moral sense decided the case half the time. Then I sat down to search the authorities until I had exhausted my books. I might once in a while be embarrassed by a technical rule, but I most always found principles suited to my view of the case. My object was to discuss a point so as never to be teased with it again, and to anticipate an angry and vexatious appeal to popular tribunal by disappointed counsel."

While still chancellor, Kent became, in 1822, a member of the convention to revise the State Constitution, and in 1823, having attained the age of sixty, he resigned the chancellorship, because the constitution inhibited his holding office after that age. His retirement was contemplated by members of the bar with the deepest concern. Those residing in the city of New York appointed a committee to prepare an address on the occa-





James Kent

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JAMES KENT.

(1763-1847).

Distinguished Jurist and Commentator; Member of Assembly, 1790-92-96; Recorder of New York, 1797; Justice Supreme Court, 1798-1804; Chief Justice, 1804-14; Chancellor, 1814-23; Member Constitutional Convention of 1821; author of "Commentaries on American Law."

sion; this was adopted, and the committee was requested to transmit the report to him at Albany. The address was signed by all the leading lawyers of the city, and expressed their regret that his term of service had expired.

After his resignation, Kent removed from Albany, where he had lived while chancellor, to New York City, and resumed the delivery of law lectures at Columbia College. He also practiced law as chamber counsel. Out of the lectures he now delivered grew the "Commentaries on American Law," the first edition of which was published in 1826-30. These commentaries have, by their learning, range and lucidity of style, won for him a high and permanent place in the estimation of both English and American jurists. Many eloquent tributes have been paid to the character of Chancellor Kent, and to his great ability as a jurist. Judge Dillon, in his work on the "Laws and Jurisprudence of England and America," said this of him:

"The American bar and people venerate the name and character of Chancellor Kent. Simple as a child in his tastes and habits throughout his tranquil and useful life; more than any other person the creator of the equity system in this country, the author of the commentaries which, in accuracy and learning, in elegance, purity and vigor of style, rival those of Sir William Blackstone, his name is admired, his writings prized, his judgments at law and in equity respected in every quarter of the globe (and in no where more than in England), wherever in its widening conquest the English language, which is the language of freedom, has carried the English law."

Others have spoken no less earnestly regarding this great jurist.

"It is to James Kent that our jurisprudence owes much of its equity jurisprudence and a large part of our common law. The name of this great lawyer is authority to-day in Westminster Hall almost as unquestioned as in our own country. Wirt said Kent knew more law than most of the other judges in the United States put together. He may reasonably

be called the founder of the equity jurisprudence of this country. * * * Writing the first expositions of this great branch of the law, he naturally united the commentator with the judge. Nothing can surpass the learning, the patience, the acuteness, the sound sense and the humanity of this most modest and most useful of the many great citizens to whom our State stands indebted for its prosperity."

Nathan Sanford, the fourth chancellor, was born in Suffolk county, New York, November 5, 1777, and died in Flushing, New York, October 17, 1838. After studying in Yale College, he was admitted to the New York bar in 1799, and began the practice of law in New York City. Interest in public affairs, however, soon occupied his attention almost to the entire exclusion of his professional work. He served two terms in the New York Assembly, being speaker of the Assembly for one year, and also was for three years a member of the State senate. Twice he was a member of the United States senate, his first term being from 1815 to 1821, and his second 1826 to 1831. His professional career of a public character was first during the period of 1803 to 1816, when he was United States district attorney, and again from 1823 to 1825 when he was chancellor. He was forced to resign from that latter position on account of ill health. While he was United States district attorney, President Jefferson appointed him United States commissioner in bankruptcy. In his official capacity he had charge of many important cases connected with the international difficulties of France and England and the war of 1812, and his success in handling these matters was very marked.

Samuel Jones, the fifth chancellor, came of the Jones family of Long Island, which was founded by Thomas Jones, in 1692. Many of the descendants of Thomas Jones in successive

^{4. &}quot;Judicial History of the Commonwealth," by Irving Browne, in "The Public Service of the State of New York," vol. III, p. 17.





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SAMUEL JONES.

(1769-1853).

Jurist; Member of Assembly; Recorder of New York; Chancellor, 1826-28; Chief Justice Superior Court, 1828-47; Justice Supreme Court, 1847-49.

generations followed the profession of law, and several of them became distinguished in the profession and in public affairs of the period in which they lived. The chancellor was born in Cold Spring, Long Island, a son of Samuel Jones, who was an eminent lawyer and jurist, a recorder of New York City, 1789-1797, and the first comptroller of the State, 1797-1799. The junior Samuel Jones was not less distinguished than his father. He was graduated from Columbia College in 1790; was a member of the assembly of New York State, 1812-1814; a recorder of the city of New York in 1825; chancellor, 1826-1828; chief justice of the superior court of the City of New York, 1828, 1847; and a justice of the supreme court of the State, 1847-1849.

Reuben H. Walworth, who succeeded Samuel Jones, was the last chancellor of the State. He was descended from William Walworth, a member of an old English family, who emigrated to America and settled in Connecticut in 1671. Born in Connecticut, October 26, 1787, he died in Saratoga Springs, New York, November 2, 1867. He entered upon the study of law in Troy, New York, at the age of seventeen, and was admitted to practice at the bar in 1809. In the following year he began practice in Plattsburgh, and soon attained distinction as one of the most prominent lawyers in the northern part of the state, becoming a master in chancery and a county judge within a few years. From 1821 to 1825 he was a member of Congress, a Judge of the Fourth judicial district from 1823 to 1828, and from 1828 until 1846 he was chancellor.

Walworth made an excellent record and achieved a professional standing which placed him well alongside all his predecessors in the high office which he held for eighteen years. He was a man of many peculiarities. One of his weaknesses was a fondness for boasting of his descent from Walworth, who was

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mayor of London during the reign of Richard II., and was responsible for the death of Watt Tyler. An amusing story has been told in this connection explaining why Walworth failed to be appointed to the chief justiceship of the United States Supreme Court. President John Tyler was upon the point of tendering this appointment to the chancellor, when he was informed of the latter's pride in his descent from Lord Mayor Walworth. President Tyler was a descendant of Watt Tyler, and the animosities raging between the two distinguished ancestors of these later distinguished men influenced the President to withdraw the name of the chancellor and to nominate for the place Samuel Nelson, of New York, who held the seat on the bench of the United States court for many years. One authority has said of Walworth:

"Chancellor Walworth may justly be regarded as the great artisan of our equity laws. In some sense he was the Bentham of America, without the bold speculations and fantastical theories which, to a certain extent, characterized the great British jurist. What Bentham did in removing defects in English jurisprudence, Walworth did in renovating and simplifying the equity laws of the United States. Justice Story pronounced him 'the greatest equity jurist living.' Before his day, the Court of Chancery in New York State was a tribunal of ill-defined powers and uncertain jurisdiction -in a measure subservient to the English Court of Chancery in its procedure. Chancellor Walworth abolished much of this subtlety, many of those prolix and bewildering formalities which had their origin in the middle ages. He reduced the practice of his court to standard rules, which he prepared with great industry. These rules greatly improved the old system of equity practice, and though he has been charged with thus complicating the Court of Chancery with expensive machinery, it cannot be gainsaid that with Chancellor Walworth equity was the soul and spirit of the law, 'creating positive and defining rational law, flexible in its nature and suited to the fortunes, cases, and reciprocal obligations of men.' The contents of fourteen volumes of Paige and Barbour's 'Chancery Reports,' containing the adjudications in his own court and a large part of the matter of the thirty-eight volumes of Wendell, Hill and Denio's Reports, consisting of the opinions he pronounced in the court of errors, attest his vast judicial labors."

By the act of March 21, 1823, it was provided that the duties of the judge of the court of probate should devolve on the chancellor of the chancery court. In April, 1823, following the direction of the Constitutional Convention of 1821, the Legislature passed an act conferring on the eight circuit judges equity jurisdiction concurrent with the chancellor, subject to the appellate jurisdiction of the chancellor. It was also provided that each circuit judge might appoint a clerk for the court of equity to be held by him, the said clerk to perform the duties of register. Ultimately these courts were abolished and the chancellor was vested with general equity jurisdiction. The circuit judges then became vice-chancellors in their respective circuits. Masters and examiners were appointed by the governor for a term of three years, and were soon removed. In 1823 there were five hundred and ten masters and twenty-five examiners. business of the court increased so rapidly in the first forty years of its existence that a separate vice-chancellor was appointed for the First Circuit, with his office in New York City, and in March, 1839, an assistant vice-chancellor was appointed for the same circuit. In March, 1839, a separate vice-chancellor was appointed for the Fourth District, with his office in Rochester. In accordance with the action of the Constitutional Convention of 1846, the court of chancery ceased to exist in July, 1847.

The chancellors and vice-chancellors under the State government, with the dates of their appointments were:

Chancellors: Robert R. Livingston, May 8, 1777; John Lansing, Jr., October 21, 1801; James Kent, October 25, 1814; Nathan Sanford, August 1, 1823; Samuel Jones, January 24, 1826; Reuben W. Walworth, April 22, 1828.

Vice-Chancellors: William T. Mc Coun, March 16, 1831;

Lewis D. Sanford, May 12, 1846; Frederick Whittlesey, April 16, 1839.

Vice-Chancellors of the First Circuit, New York City: Murray Hoffman, April 15, 1839; Lewis D. Sanford, March 11, 1843; Anthony L. Robertson, May 12, 1846.

Robert T. McCoun, the first vice-chancellor of the First District, was a native of New York and one of the prominent members of the New York bar during the first half of the nine-teenth century. Continuing as vice-chancellor from the time of his appointment in 1831 until the abolition of the court, he was then elected a justice of the supreme court in the Second District in 1847, and served a full term. After that he retired from the active practice of his profession.

Lewis D. Sanford, who was appointed assistant vice-chancellor of the First Circuit, in 1843, and became vice-chancellor in 1846, was born in Ovid, New York, June 8, 1807, and died in Toledo, Ohio, July 27, 1852. A year after the court of chancery was abolished, he became a justice of the superior court of the city of New York, and continued upon that bench until his death. Among his most important contributions to the jurisprudence of the State were four volumes of the "New York Chancery Reports", 1846-1850, and "The New York Superior Court Reports", 1849-1852.

Frederick Whittlesey, vice-chancellor of the Eighth Judicial District, 1839-1847, was a native of Connecticut, and died in Rochester, New York, September 19, 1851. He was graduated from Yale College in 1818, practiced at the bar in Utica and in Rochester, and was a member of Congress, 1831-1835. In 1847-1848 he was a judge of the state supreme court, and afterwards a lecturer on law in Genesee College.

Murray Hoffman, a son of Josiah Ogden Hoffman, the dis-

tinguished lawyer, was born in New York City, September 29, 1791, and died in Flushing, Long Island, May 17, 1878. He was graduated from Columbia College in 1809, and afterwards was admitted to practice law in New York City. He held the appointment of assistant vice-chancellor from 1839 to 1843, and in 1853 was appointed a judge of the superior court of New York City, remaining on that bench until 1861. He was a voluminous writer on legal topics and some of his most important works were: "Offices and Duties of Masters and Chancery", "Treatise on the Practice of the Court of Chancery", "Treatise on the Corporation of New York as Owner of Property", "Compilation of the Laws Relating to the City of New York", "Vice-Chancery Reports", "Provisional Remedies", "Treatise on the Law of the Protestant Episcopal Church in the United States", and "Ecclesiastical Law."

Anthony L. Robertson, who was vice-chancellor, 1846-1847, was born in New York City, June 8, 1808, and died in the city of his birth, December 18, 1865. He graduated from Columbia College in 1825, was admitted to practice law, and soon ranked high in his profession. After his service in the chancery court he was surrogate of New York City in 1848; a judge of the superior court of New York City in 1859 and 1864; and chief justice of the superior court in 1866.

For a time under the State government, the admiralty court, as established by the colonial government, continued in existence. Nearly a decade and a half before the revolution, in 1762, Robert Morris was commissioned by Governor Monckton to be judge of the court of vice-admiralty, and a year later Richard Nicolls received from the higher court of admiralty

in England, to which the provincial court of New York was subordinate, the appointment of register. In June, 1774, according to the report of Governor Tryon to the Lords of Trade, Judge Morris and Richard Nicolls were still holding office, and Thomas Ludlow was marshal, all these officers serving without salary.

In 1774, Judge Morris resigned his commission because he chose rather to cast his fortunes with the colonists in the impending conflict. On November 25, 1775, the Continental Congress recommended that the several Colonies should establish courts which should adjudicate such questions as might arise concerning the captures on the seas during the war, and it advised that all trials should be by jury. Following this recommendation, the New York Provincial Convention, on July 31, 1776, authorized the establishment of the high court of admiralty for the State of New York, and appointed Robert Morris Judge of the court, John MacKesson register, and Robert Benson marshal and provost-marshal. Morris declined the office, and in August following, Lewis Graham was appointed to the position.

Under the Articles of Confederation in 1778, a Federal court was established to hear appeals from the State courts of admiralty, this court being termed the court of appeals in cases of capture. In 1786, the salaries of the officers of this court were abolished by Congress, upon the ground that the war was at an end, and a special provision of \$10 a day for actual service thereafter was allowed.

On February 14, 1787, the State legislature passed an act protesting against the encroachments of the Federal court upon the province of the State in admiralty matters, and declaring that "the Federal court should have no recognizance over transactions within the state limits." When the Constitution of the United States was adopted by New York State in 1789, the ad-

miralty jurisdiction, which up to that time had vested in the state court passed to the United States. Thereafter, admiralty jurisdiction was vested exclusively in the Federal courts, and the State court ceased to exist. Since that time admiralty jurisdiction has been confined to the United States district court.

As has been shown in previous chapters of this work, under the Dutch government supreme appellate jurisdiction was vested in the director-general and his council. The early English government followed the Dutch precedent, and this jurisdiction was vested in the governors and council, who represented the King. From 1665 to 1685 some of the appellate functions were assigned to the court of assize.

In the legislation of 1683, and also in that of 1691, provision was made for appeals to the King by any "inhabitant, planter or freeholder * * * from any judgment or decree. * * * in the High Court of Chancery or in any of the courts of Oyer and Terminer and General Gaol Delivery." It was required that the person or persons appealing should "first pay all cost of the decree or judgment from which the appeal was taken, and also all the debts, costs and damages adjudged against him or them in any other suit or suits within the province, and give in the sureties recognizance, double the amount involved, and to make return within twelve months after the appeal or appeals are made and to pay all costs, damages and charges if Cast." If the appellant did not make return within the said twelve months, execution issued against him or his sureties. Appeals were limited to cases which involved one hundred pounds or more.⁵

By the act of 1691, the privilege of appeal was extended to

^{5. &}quot;Colonial Laws of New York," vol. I, p. 128.

any "sojourner within the province," and it was provided that appeals should be taken from "the courts of mayor and aldermen and courts of common pleas, to the supreme court, for any judgment above the value of twenty pounds. And from the supreme court to the governor and councill for any judgment above the value of one hundred pounds, and from the governor and councill to their majestyes in councill for any decree or judgment above the value of three hundred pounds." Subsequently, the supreme court had appellate jurisdiction of the most comprehensive character, and during the colonial period immediately prior to the Revolution, there was no higher tribunal of review. The only appeal from the supreme court was to the King of England.

Necessity for an independent appellate tribunal which should have power to review even the decisions of the supreme court, was felt long before the colonial period came to an end. When the convention of 1777 convened, the subject came up as one of the most important matters to be considered, and for this purpose a court of last resort, called the court for the trial of impeachments and the correction of errors, was established. Following the articles of the Constitutional Convention, the legislature passed an act organizing this court, November 23, 1784. All the errors in the court of chancery, the supreme court, the court of probate and the admiralty court (except cases of capture) were to be corrected by the new court; the proceedings therein were directed, and the periods for bringing writs of error fixed and determined. Writs in civil and criminal matters, but in capital cases the writs were by grace. In all cases the chancellor issued the writ, but in capital cases the writ was only issued on motion, or petition with notice to the public prosecutor. In February, 1786, the court adopted the following seal: On a field

^{6.} Colonial Laws of New York, vol. II, p. 230.

argent in the middle chief a sun in its meridian: below the sun a scroll bearing the words, "New York"; around the field the inscription "Court for Trial of Impeachments and Correction of Errors." As thus constituted, the court remained until 1846, a period of nearly seventy years.

Prior to the revolution, justices of the peace existed and were continued by various statutes passed at different times. They were the courts nearest the people. In the Assembly Act of 1691 establishing courts of judicature, there was provision for justices of the peace who, residing in any town or county of the province, should have cognizance of all causes, cases of debt or trespass to the value of forty shillings or under, the trial and determination to be by the justices without a jury; but "with the assistance of one of ye freeholders of the towne or place where the cause of action arose." The process of warning was by a summons under the hand of the justice, directed to the constable of the town or precinct or his deputy, the summons to be personally served at the defendant's house two days before the day of hearing, and to be sufficient authority for the justice to proceed and determine the cause in the defendant's absence, and to grant execution against the defendant's person or his estate. The plantiff or defendant could have a jury trial "at the proper cost and charges of the person desiring ye same."7

Chapter forty-four, of the third legislative session, passed February 26, 1780, empowered justices of the peace, mayors, recorders and aldermen, to try cases to the value of one hundred pounds and under. The enactment provided that all causes, actions, and cases of debt, slander, trespass, replevin, or for damages, where the amount demanded did not exceed the sum of £100, should be heard before one of the justices of the peace of

^{7. &}quot;Colonial Laws of New York," vol. I, p. 226.

any of the counties, or the mayor or recorder or aldermen of the cities of New York and Albany and the borough of Westchester respectively. The defendant was required to appear forthwith, when the process was by warrant, and when by summons not less than six days or more than twelve days were allowed for his appearance. The judgment was to be given within four days after the trial. If the magistrate who issued the warrant was absent, the defendant could be carried before any other magistrate of the same city, town, borough, manor, precinct, or district.

Process against all freeholders and against all inhabitants having families was by summons only, and was served on the person of the defendant, or a copy was left at his or her house or place of abode, in the presence of some member of the family of suitable age and discretion (who should be informed of the contents thereof), at least six days before the time for appearance mentioned in the summons. The constable or officer who served the summons was required to endorse upon it the manner in which he executed it. On non-appearance without sufficient reason assigned, the court proceeded to trial if the defendant had been personally summoned; if the summons was left at his house, a warrant issued in case of non-appearance.

If the parties agreed to it, the case could be tried without appearance. On an affidavit showing that the plaintiff was in danger of losing his demand if a summons issued, a warrant issued, even though the party was a freeholder. If the defendant gave security the court might adjourn the trial. A non-resident plaintiff of the district, upon giving security, might have a warrant returnable immediately. Either party could demand a jury of six freeholders or freemen to try the case. The juror's oath was in the following form: "You shall well and truly try this matter in difference between A. B., plaintiff, and C. D., defendant,

and a true verdict give according to the evidence, so help you God." The witnesses's oath was as follows: "The evidence which you shall give in this matter in difference between A. B., plaintiff, and C. D., defendant, shall be the truth, the whole truth, and nothing but the truth, so help you God."

After hearing the proofs and allegations, the jury was kept together in some convenient place until it had agreed upon a verdict. When the jurymen had all agreed, they delivered their verdict into court, and thereupon judgment was given. No oath of the parties or *ex parte* affidavit was admitted in evidence unless the parties consented thereto. Every person summoned and drawn as a juror or subpoenaed as a witness, who did not appear, or who appearing, refused to serve, or give any evidence in such action, forfeited such fine or fines, not exceeding the sum of forty pounds nor less than ten pounds, in the discretion of the court. These fines were applied to the use of the poor of the place they were levied.

If, in any such action, the plaintiff was non-suited or discontinued, or withdrew his action without the consent of the defendant, judgment was given against him for the costs accrued, and, if he appeared to be indebted to the defendant, judgment was given against him for the amount of his debt or demand and costs. Execution in case of judgment issued to the constable to levy on the debtor's goods, and for want thereof to take the debtor's body. No execution could issue against a freeholder in less than thirty days after judgment, unless on proof of danger of losing the debt. It was also provided that if any plaintiff should commence or prosecute any of the actions mentioned in the act, in any other manner than as directed in the act, and should obtain a judgment thereon, which without costs should not amount to more than £100, not having caused an oath or affirmation to be

made before obtaining the writ and filing the same in the clerk's office, that the person making the oath or affirmation did truly believe the debt due or damages sustained exceeded £100, should not recover any costs in such action. This provision did not extend to suits in the name of the people, or where titles to land came in question, or actions for slander. It also provided that the act should extend to the matter of account where the total sum of the amount exceeded the sum of £400.

The act also provided that no justice of the peace, being a tavern keeper, should try any action in his own house. In actions of trespass on plea of title, the defendant was required to enter into recognizance, and to prosecute and make good his title in manner as directed by a law of the colony of New York entitled "An Act for preventing trespass, passed May 6th, 1699;" otherwise the magistrate was directed to hear and determine the cause as if no such plea had been made.

The cost for a summons was sixteen shillings; a warrant, twenty shillings; a judgment, twenty shillings; administering every oath affirmation, ten shillings; execution, thirty shillings; subpoena for each witness, ten shillings; venire facias to summon a jury, twenty shillings; swearing a jury, thirty shillings; witness attending on summons or otherwise, forty shillings per day, and so in proportion for a longer time; constables or other proper officers for serving summons, subpoena, or other execution for each mile travelled or under, twenty shillings, and for every extra mile, ten shillings; serving every execution for every pound, one shilling; and summoning every jury, sixty shillings. Jurors received twenty shillings per man for each case tried, and when attending and not serving ten shillings per man. There was a provision in the act that in any case the costs should not exceed the sum of £40.

No certiorari or writ of error could be issued unless an affidavit showing reasonable cause was presented to the justice within one month after judgment. A copy of such affidavit was given to the adverse party when required. Upon the affirmance or reversal of the judgment the prevailing party was awarded costs. The supreme court was directed to order the attorney-general to prosecute magistrates guilty of unjust practices. This act was to remain in force until March, 1781.

Chapter nine, of the laws of 1780, which was passed at the fourth session of the legislature, reduced the jurisdiction of the justices of the peace and the other officers mentioned in chapter forty-four, to the cognizance of cases to the value of £10 only. The fees were reduced to one-twelfth part of their nominal value as expressed in said act, and it was further ordained that upon all executions to be issued in consequence of judgments in any court, in pursuance of said act after the passage thereof, money should be received at the following and no other rates: Silver at the rate of eight shillings for a Spanish milled dollar, and gold and other coins in the like proportion at the rates they usually pass; new bills emitted upon the credit of the state pursuant to the act of congress of the eighteenth of March preceding, at their respective nominal value, and every other species of paper currency emitted by the authority of congress, or of the late colony of New York, or the state, at one-fortieth part of the nominal value thereof, or at the rate of two pence and two-fifths of a pence for each dollar, or eight shillings expressed on the face of each bill.

The jurisdiction of the justices' courts at the present time, 1910, has been concisely stated by Judge Adolph T. Rodenbeck, whose manuscript⁸ has been drawn upon for the following

^{8. &}quot;History of the Administration of Justice," by A. T. Rodenbeck.

synopsis. Where the sum involved does not exceed \$200, the courts have civil jurisdiction in actions on contract; for damages for personal injury or injury to property; for fine or penalty: on bond for payment of money; and to recover chattels, with or without damages for taking, withholding or detention; also upon a surety bond, taken by any justice of the peace; upon a judgment rendered in a court of a justice of the peace, or in a district court of the city of New York, or in a justice court of a city; being a court not of record; to recover damages for an escape from the jail liberties, where the sum claimed does not exceed \$50; to render judgment upon the confession of a defendant; detention of canal boats; removal of constables; enforcements of mechanics liens; altering roads; to punish for criminal contempt; disorderly, contemptuous or insolent behavior; breach of peace; resistance of execution of law mandate; in summary proceedings to dispossess tenants in general; over the person; order of arrest in civil actions; over property; attachment; action to recover a chattel; animals straying in highways.

A justice of the peace has no jurisdiction: where the people of the state are a party, except for fines and penalties not exceeding \$200: where the title to real property comes in question; where the action is to recover damages for assault, battery, false imprisonment, libel, slander, criminal conversation, seduction or malicious prosecution; by a creditor against wife, etc., of a decedent; against heirs of an intestate, etc., an action against a child born after the making of a will, etc.; executor, etc., to recover damages for death of decedent; for public funds illegally obtained; where in a matter of account the total of the accounts of both parties exceed \$400; where the action is against an executor or administrator, unless for less than \$50, and the claim has been presented to the executor, is rejected.

In a matter within its jurisdiction, where special provision is not otherwise made by law, a justice's court is vested with all the necessary powers possessed by the Supreme Court. Any provision of the code of civil procedure not contained in sections 2861-3158 made applicable to proceedings before a justice of the peace is subject to the qualification that it does not include anything repugnant to any special provision of law regulating the jurisdiction or powers of a justice of the peace.

It is not known that the Mayor's Court in New York City was held from June 27, 1774, to February 10, 1784, for the public records are not in existence. After the British had left the city, Governor Clinton appointed James Duane as Mayor, and Richard Varick as Recorder, and the Mayor's Court and the Courts of Session were reopened. The Mayor's Court was convened February 10, 1784, and Duane, after promulgating rules to regulate procedure therein, adjourned for three weeks. Upon the adjourned day, February 24, Recorder Varick took his seat beside the mayor and regular business was resumed. On that day one hundred and sixteen writs were issued; on the next adjourned day there were one hundred and sixty-seven new writs, and at the session in July there were one hundred and ninety-eight. It has been remarked that "The concentration at once of this large amount of business in the court, which was quadruple that of the Supreme Court, and embraced actions of all kinds and descriptions, was owing to the great confidence felt in the legal ability of Duane and the facility afforded by the frequent sessions of the court for the speedy dispatch of business.

"The high character of Duane drew into the court every lawyer of ability; and for more than a quarter of a century afterwards, it became,

in view of the men who presided in it, and those who practiced before it, not only the leading court in the city, but one of the most eminent judicial tribunals in the State. During the mayoralty of Duane and Varick, and while Samuel Jones, James Kent and Richard Harrison were successively recorders—that is until the year 1805,—the leading practitioners in the court were Alexander Hamilton, Aaron Burr, Robert Troup, Edward Livingston, Brockholst Livingston, Egbert Benson, Morgan Lewis and Josiah Ogden Hoffman, all of them at the commencement of this period young men whose forensic efforts were made in the mayor's court."

One of the first cases that was brought before this court for argument and decision was of extraordinary character and importance, in the issue involved, in the absorbing public interest which was taken in it, and in the character of the lawyers who argued it. The case was that of Rutgers vs. Waddington, and in its presentation and final adjudication the question of State Rights was brought to the front for the first time in the history of the United States. Otherwise the case was notable. It was the first important appearance of Alexander Hamilton as an attorney, and his argument was the first presentation of those political principles with which, in subsequent years, he became conspicuously identified. Views presented by him in this instance he elaborated in the National Convention of 1787; and ultimately they were embodied in the Constitution of the United States.

An action had been brought to recover six years' rent of an ale house which belonged to the plaintiff Rutgers, in the city of New York, and which had been occupied by the defendant Waddington during the possession of the city by the British. This occupation had been first under license from the general who was in command in New York City in 1778, and afterwards under authority from Sir Henry Clinton, the British general. On the part of the plaintiff it was held that one belligerent might begin

^{9. &}quot;Historical Sketch of the Judicial Tribunals of New York", by Charles P. Daly, p. 59.

an action against another after articles of peace had been agreed upon, to recover damages for loss of or injury to property during the war. In support of this contention, an act of the State legislature of 1783 was relied upon. This act conferred right of action, and prohibited the defendant from setting up as defense that the property involved had been occupied, injured, or destroyed by military command. It was, however, contrary to national precedence, and had never before been judicially ruled upon. Its passage by the legislature was due to the influence of. and reflected clearly, the intense patriotic sentiments of the period. and the general hatred which was felt for the Tories. Great property interests were also involved, and on the outcome of the trial depended much of the final adjustment of property ownerships concerning which conflicting opinions existed, the outgrowth of divergent political views which had prevailed among the people during the years of the revolution, and immediately preceding.

Mayor Duane presided over the court. Robert Troop and William Lawrence appeared for the plaintiff, and Egbert Benson, who was then the State attorney general, volunteered his services on the same side. For the defendant, Alexander Hamilton was the principal counsel, and associated with him were William S. Livingston and Morgan Lewis. Benson and Hamilton were the leaders on the opposing side, the other counsel being less conspicuous, although active in arguing the various points.

In support of the case of the plaintiff, main reliance was placed by the counsel upon the statute which has just been referred to, and upon the argument that the State had sovereign capacity to pass any acts which might seem to its representatives to be wise and justifiable. In amplification of this view, it was argued that each State was an independent sovereignty; that the

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power to pass laws rested in it; that it might enact a law affecting the property or person of any one within its jurisdiction; and that the sovereignty of the people in each and every State was absolute, and beyond the control even of the Continental Congress. It was further argued that the mayor's court, as a State tribunal, could not disregard the laws of the State, even though such laws might be in conflict with what had been agreed to by the national congress.

Hamilton's contention was that, by the Constitution of 1777, international law had become a part of the common law, and thus an integral part of the law of the State, and that, therefore, any act passed by the legislature which violated the terms of international law must be null and void. He further argued that under the terms of the treaty of peace between the United States and Great Britain the defendant was fully protected in his rights. The Continental Congress, one of the parties to that treaty, had no right to deprive him of any privileges to which he was thus entitled, and consequently the State had no such right. Regarding the point that each State was independent of the central authority of the Continental Congress, he advanced the view that the States were not simply an aggregation of independent communities, but that, under the Articles of Confederation, they were a Union for a common end and purpose, with certain of their powers vested in a general and national Congress. He analyzed in detail the nature of the Union established by the Thirteen Colonies, and came to the conclusion that the States, in their confederate capacity, had delegated the power of entering into treaties exclusively to the Continental Congress; that, therefore, the making of a treaty by the Congress bound each State, and that no State had the right to pass any laws violating such a treaty or repudiating any of its provisions. He also claimed that the

State of New York was a party to the Declaration of Independence and to the Articles of Confederation, and that, therefore, having entered into a contract for the purpose expressed in the Declaration and in the Articles, it could not withdraw or be released from its obligations without the consent of the other parties to the contract. In all essentials this was the argument against State Rights which was destined to vex the country for nearly a century after that time. It was the foundation for Hamilton's political principles in after years, and upon it were based the propositions which statesmen of later generations presented in the great internal controversies in which the United States became involved.

Mayor Duane's decision was of not less importance than the argument of Hamilton. He held that the defendant was liable for the rent of the premises for the first three years of his occupancy, from 1777 to 1780, for the reason that their use during that period could not be regarded as having any relation to the war, and that the commissary general had no authority to grant possession of the property at that time. He held that for the other three years, from 1780 to 1783, the defendant was not liable. Upon this point he agreed with Hamilton, taking the ground that international law governed during this period, and that, by the Constitution of the State, that law had become the law of the State. Bound by the articles of the confederacy into which they had involuntarily entered, no one of the separate States could act in conflict with those articles, and the rights of the States could not prevail above the national rights.

Naturally, in the frame of mind in which the public was at that time, this decision created an intense feeling of popular indignation. It was regarded as decidedly unpatriotic, and public meetings were held to denounce it as a violation of the privileges

of the people and an act of judicial tyranny. An appeal was made to the council of appointment to remove Mayor Duane and Recorder Varick, and to put in their places judges who would recognize the law of the State. An appeal to the court of errors was threatened, but the defendant compromised the claim, and thus the appeal was not taken. Subsequently, upon the motion of Hamilton, the legislature of the State, in 1787, repealed the statute of 1783 upon which the plaintiff's case was based, and passed an act covering this matter, based upon the principles which Hamilton had advanced and Duane had decreed.

Duane continued to preside in the court until, in 1789, he was appointed by Washington, after the organization of the United States courts, to be district judge of New York. Richard Varick succeeded him as mayor, and in the thirty-five years that followed, the mayors and recorders who sat in this court and in the court of sessions were among the most eminent men in the State, all of them, with one exception, being distinguished lawyers. The mayors were Edward Livingston, DeWitt Clinton, Marinus Willett, Jacob Radcliffe and Cadwalader Colden. The recorders were Samuel Jones, James Kent, Richard Harrison, John B. Prevoost, Maturin Livingston, Pierre C. Van Wyck, Josiah Ogden Hoffman, Jacob Radcliffe, Peter A. Jay and Richard Ricker.

During the mayoralty of DeWitt Clinton, he ceased to preside in the mayor's court, and from that time until 1821 the recorder sat as presiding judge in that court, and the mayor as presiding judge of the court of sessions. In 1821 an act was passed changing the name of the court to the court of common pleas for the city and county of New York, and creating a permanent judgeship. Modified in some respects by the Constitution of 1823, this law went into effect, and John T. Irving was ap-

CADWALLADER D. COLDEN.

(1769-1834).

Lawyer; Member of Assembly; Mayor of New York; Member of Congress; State Senator.

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pointed the first judge. Mayor Stephen Allen ceased to preside in the court of sessions, and Recorder Richard Riker, who had sat for some years in the mayor's court, succeeded to the head of the court of sessions. For seventeen years, until his death, Judge Irving presided in the new court. During this time the leading practitioners before him were John Anthon, Martin S. Wilkins, Elisha W. King, John T. Mulligan, Robert Bogardus, Pierre C. Van Wyck, Thomas Phoenix, Joseph D. Fay, David Graham, Hugh Maxwell, John Leveridge and William M. Price; and now and then, in important cases, appeared such distinguished members of the senior bar as Thomas Addis Emmet, Peter A. Jay, Peter W. Radcliffe, Samuel M. Hopkins, David B. Ogden, William Slosson, William Samson and others.

In 1834 an associate judge of the court of common pleas was created, and Michael Ulshoeffer was the first incumbent of the office. Upon the death of Judge Irving, in 1838, Ulshoeffer became first judge, and Daniel P. Ingraham associate judge. In 1839 an additional associate judge was provided, and William Inglis was appointed. In 1844 Charles P. Daly was appointed in place of Judge Inglis, and, as then constituted, the court continued for three years, until after the adoption of the Constitution of 1847.

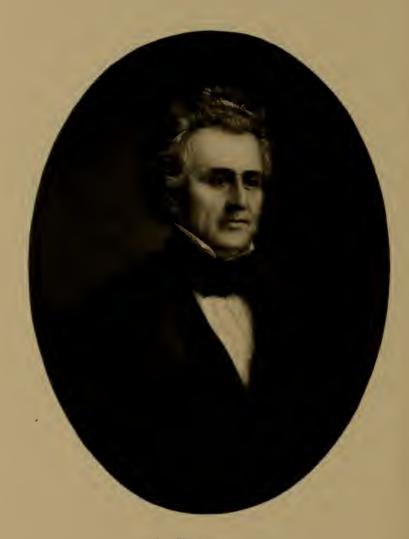
When the Revolution broke out, confused ideas prevailed as to the nature and jurisdiction of the court of probate, and even as to its name. Sometimes it was called the prerogative court, and sometimes the court of probate, and this confusion of names has led to the impression that there were two tribunals before the revolution. Supposing the authority of this court to be greater than it actually was, the legislature, in 1778, intended to

sweep away every authority vested in it, and proposed to constitute a court thereafter to be held by a single judge, having the same jurisdiction in testamentary matters and in cases of intestacy, and to be known as the court of probate. Accordingly, in an act passed in that year, it was declared that the judge of the court of probate should be vested with the powers and authority, and have the like jurisdiction in testamentary matters, which the governor of the Colony of New York, while it was subject to the crown of Great Britain, had and exercised as judge of the prerogative court, or the court of probate of the colony, except the power of appointing surrogates.¹⁰ The court held sittings at regular periods, in different parts of the State, until 1783, when it was located in the city of New York. Then, in 1797, it was permanently removed to Albany, the judge and the clerk being directed to transfer all papers and documents to that city, and in the future to reside there.

Up to 1797, the surrogates of the different counties continued to exercise exactly the same powers which they had before the Revolution. In that year an act was passed, by which the granting of probate and of letters of administration was taken away altogether from the court of probate, except in certain specified cases, and conferred upon the surrogates of the different counties, from whose decision in contested cases an appeal was allowed to the court of probate. This act provided that the governor, with the consent of the council of appointment, should commission a surrogate for every county in the State, and empower each surrogate to take proof of the last wills and testaments of persons dying in his county, or of one who was an inhabitant of it if he died from home, to issue probate and grant

^{10. &}quot;History of the Administration of Justice," (MSS.) by A. J. Rodenbeck.





R. H. Walworth

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REUBEN H. WALWORTH.

(1789-1867).

Jurist; Member of Congress, 1821-23; Circuit Judge, 1823-28; Chancellor, 1828-48.

letters-testamentary thereon, or letters of administration with the will annexed; or where such person died intestate to grant letters of administration, such letters to issue in the name of the people, and to be tested in the name of the surrogate, and sealed with the seal of his office. The act further provided that each surrogate should record all wills proved before him, with the proof thereof, and all letters testamentary or of administration issued by him, with all things concerning the same, and directed that when administration was granted by him, that the inventory should be "exhibited in his office."

In 1786, the court of probate, where the personal estate was insufficient to pay debts, was empowered to order the sale of real estate and make distribution of the proceeds among the creditors. When the court was removed permanently to Albany in 1797, it was found very inconvenient to resort thither in all cases for that purpose. Accordingly, in 1799, an act was passed conferring this power upon the surrogates when the lands of the deceased were exclusively in one county; and, by the same act, the surrogates were authorized to admit wills to probate or to grant letters of administration where persons died out of the state, or within it who were not inhabitants.

In 1801 the surrogates were clothed with the same power as the judge of probate, to cite the administrators to account, to decree distribution, or the payment of bequests and legacies, and compel it by execution. In 1802 they were authorized to appoint guardians for infants as fully as the chancellor might do; in 1806 to order the admeasurement of dower of lands within their county upon the application of the widow, the heirs, or the guardians of minors; in 1807, to exercise powers as extensive as the court of probate in ordering sale of lands for the payment of debts, and in 1810 to order the mortgaging or leasing of the land

of testators or intestators for the payment of debts, where any infant was interested. All these laws, whether relating to the surrogates or to the courts of probate, were incorporated in one general act in the Revision of 1813, in which act are also embraced some other general powers, such as compelling the production of wills, documents, or writings, the attendance of witnesses, and the power of punishing for contempt and by an act passed in the same year, they were authorized to complete the unfinished business that might be left by their predecessors.

In 1819 they were empowered to confirm sales of real estate ordered by them for the payment of debts, and to direct conveyances to be made by executors or administrators, and in 1821, to institute an inquiry respecting the personal estate of intestates not delivered to the public administrator nor accounted for in a lawful and satisfactory manner by the person in whose hands it was supposed to have fallen. By the act passed in 1823, the court of probate was abolished. Its appellate jurisdiction on appeal from surrogates was transferred to the court of chancery, and whatever other jurisdiction it possessed was by this act vested in that court. Its records were placed with the clerk of the court of appeals.

From 1823 to the passage of the Revised Statutes, the only acts of a general character relating to surrogates were acts directing them to record all letters testamentary and of administration, all appointments of guardians, and all orders and decrees upon sales of real estate made by themselves or their predecessors. In that revision the jurisdiction of the surrogate's court was considerably enlarged, but nothing was taken away. In 1846 the office of surrogate was abolished in all counties except those which had a population above 40,000, and the duties which they had exercised were imposed upon the county judges. The legislature

had power to authorize the election of surrogates for a term of six years in those counties which then had a population in excess of 40,000. The surrogates thus elected could take acknowledgment of deeds and administer oaths as county judges.

The judges of the court of probate from 1778 to the abolishment of the court in 1823, were, with the dates of their appointment: Thomas Tredwell, March 13, 1778; Peter Ogitire, April 16, 1787; Leonard Gansvoort, April 5, 1799; John Chaplin, February 11, 1811; T. Van Wyck Graham, March 16, 1813; Gerrit Y. Lansing, July 8, 1816.

After the supreme court had been reconstituted by the Constitutional Convention of 1777, the council of revision and appointment created by that convention directed that the new court should meet in Kingston, then the temporary capitol of the state, on account of New York City being occupied by the British. On September 9, 1777, the court began its first session. Indicative of the changed condition of affairs in the colony, the first cause on the docket was in the name of "The People of the State of New York", and not as before, "Dominus Rex." The first charge to any grand jury in the new State was delivered by Chief Justice Jay to the grand inquest of the county of Ulster, consisting of twenty-two citizens. In his address, which was eloquent, and redolent of the patriotism which imbued the minds of the people of that period, the chief justice dwelt particularly upon the public situation, and placed emphasis upon the fact that "the Americans were the first people whom Heaven had favored with an opportunity of deliberating upon and choosing the forms of government under which they should henceforth live." Eman-

cipation from the authority of England was thus complete so far as legal declaration could make it.

Chief Justice John Jay, who was the leading figure, enjoyed the peculiar distinction of being the first chief justice of the State of New York, and also the first chief justice of the United States. He was also one of the notable public men of the Revolutionary and post-revolutionary period, eminent as a statesman and a diplomat. Born in New York City, December 12, 1745, he died in Bedford, Westchester county, New York, May 17, 1829. Graduated from Kings College (in contemporaneous times Columbia University), in 1766, he was immediately, in the same year, admitted to practice at the bar, when he was but twentyone years of age. Within ten years he had established a reputation for soundness of learning and ability that was fully justified by his after career.

No citizen of New York was more conspicuous or more influential in the public affairs which preceded the revolution. In all the patriotic movements of that time he was active, and he was the author of many of the resolutions and public documents which voiced the patriotic sentiments of the hour. He was a delegate and always a leading member of the several congresses which were held in Philadelphia, and in the deliberations of those bodies he was looked up to as a brilliant speaker and sound adviser. He was the author of various patriotic addresses to the people of Great Britain and of Canada and Ireland, and was one of the secret committee, appointed by Congress in November, 1775, "to correspond with the friends of America in Great Britain, Ireland, and other parts of the world." When he was a member of Provincial Convention in 1776, it was on his motion that the Declaration of Independence was unanimously approved,





John Jay

MATRICIAN AND ADDRESS.

JOHN JAY.

(1745-1829).

Jurist, Statesman and Diplomat; Member of Continental Congress; Member of Constitutional Convention of New York, 1777, and drafted its first Constitution; first Chief Justice of Supreme Court of New York; first Chief Justice Supreme Court of United States; Minister to Spain; Special Envoy to Great Britain; Governor of New York.

and he was the chief author of the New York State Constitution of 1777.

At the same time that he was chief justice of the State,—beginning in September, 1777,—he was a member of the council of safety, which exercised arbitrary powers in the military occupation of the State. He did not long remain on the bench of the supreme court, for he was soon called upon to serve his country in a broader field. Sent to Congress in 1778, he was chosen president of that body, holding that position for nearly a year, when, in September, 1779, he was appointed Minister to Spain. With John Adams and Benjamin Franklin he was a commissioner on the part of the United States in negotiating the treaty of peace with Great Britain. In that official capacity his efforts were of the greatest value in securing terms of settlement most advantageous to his country. When he returned to the United States in 1784, he became Secretary of Foreign Affairs, and retained that office until the end of the provincial government.

President Washington naturally held him in the highest esteem, and when the national government was organized, the President selected him to be the first chief justice of the supreme court. As chief justice of the United States he made a reputation which established him high in the esteem of his contemporaries, and gave him a fame which was not surpassed by any of his successors upon the supreme bench. It has been truly said of him that he was the incarnation of honor and dignity; as it was expressed by Daniel Webster, "when the spotless ermine of the judicial robe fell on John Jay it touched nothing less spotless than itself." Justice Story, of the supreme court, also said of him that he was "equally distinguished as a Revolutionary statesman as a general jurist." There can be no doubt of his

greatness as a judge, and many of his opinions and decisions became the foundations of our national jurisprudence.

Jay did not long remain at the head of the Supreme Court, for political affairs called him into public activity again. In 1792 he was a candidate for governor of New York, but was defeated by George Clinton. In 1794 Washington sent him as a special envoy to England, where he negotiated the celebrated treaty which bears his name. During his absence abroad he had been chosen to be governor of the State of New York, and he assumed that office upon his return to the United States. In 1798 he was re-elected to the governorship, and retired therefrom in 1801. President John Adams desired to reappoint him to be chief justice of the supreme court, but he declined that honor, and permanently retired to private citizenship.

The first rules of the new supreme court were adopted at the April term in 1796. They were drawn by *puisne* Judge Egbert Benson, of whom Chancellor Kent said that he did more to form the practice of the court than any other before or after, while Chief Justice Duer said of him that as a master of special pleading he was hardly surpassed by Chief Justice Saunders himself.

The usual preparation for admission to practice before the court was a college or university education and three years' apprenticeship, or, without the educational qualification, seven years' service under an attorney. In any case, the chief justice recommended the candidate to the governor, who, thereupon, under his hand and seal at arms, granted a license to practice. Upon taking the usual oath, the person was qualified to practice in every court in the province. Attorneys were admitted into the county

DANIEL D. TOMPKINS.

(1774-1825).

Statesman and Jurist; Justice Supreme Court, 1804-7; Governor, 1807-17; Vice President, 1817-25.

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Daniel D. Tompkins



courts with less ceremony; for the governor formally licensed all persons, no matter how indifferently recommended. As a natural result, the profession was demeaned by the admission of men who were not only of slight ability but also of indifferent character. The Constitution of 1777 provided that all attorneys, solicitors, and counsellors-at-law should be appointed by the court in which they were to practice, should be licensed by the first judge of such court, and should be regulated by its rules and orders. Rules of the court relating to the admission of attorneys and counsellors-at-law as early as 1797 provided that no person should be admitted to practice unless he should have served a regular clerkship of seven years with a practicing attorney of the court; but any period of time, not exceeding four years, during which a person after he should have been fourteen years of age should have pursued classical studies, should be accepted in lieu of an equal portion of time of clerkship.

These rules also provided for filing a certificate of clerkship, and that, if the clerkship should be intended for less than seven years because of the fact that the person has pursued classical studies, an application should be first made to a judge, who, on examination of the matter, should make an order to be annexed to the certificate, purporting that it satisfactorily appeared to him that the person applying had pursued classical studies after he was fourteen years of age, for such a period of time not exceeding four years, as should be specified in the order, and thereupon ordering that the clerkship should be for the term which should remain after deducting from seven years the time so specified in the order. After four years' practice an attorney was entitled, as of course, to be admitted to practice as counsel. This rule was modified by a rule of the November term, 1804, so that a practice of but three years was required. By a rule of the

August term, 1806, it was provided that no person other than a natural born or naturalized citizen of the United States should be admitted as an attorney and counsellor of the supreme court.

The rules relating to the admission of solicitors in chancery were substantially to the same effect, except that the person applying to be admitted was examined before the chancellor, vice-chancellor, or such other officer of the court as the chancellor directed upon a special order for examination previously made.

Rule eight, of the supreme court, passed at the January term, 1799, presented another illustration of the primitive condition of the State of New York at that time. It required every attorney residing in the city of New York to have an agent in the city of Albany, and every attorney residing in the city of Albany to have an agent in the city of New York, and attorneys residing elsewhere to have two agents, one in the city of New York and the other in the city of Albany. The object of this rule was to make it less difficult to serve papers on attorneys in actions.

The justices were appointed by the governor, with the advice of the senate, and held office during good behavior, or until they had attained the age of sixty years. They might be removed by a joint resolution of the legislature in which two-thirds of the assembly and a majority of the senate were required to pass. They were exempt from military service; could hold no other office; could receive no fees or perquisites; could not sit to hear matters wherein they had any interest or affinity to any of the parties, and could not hear any matter on appeal in which they had theretofore taken a part. Nor could they have a partner practicing in a court in which they were judges. They were *ex officio*, members of the court for the trial of impeachments and the correction of errors.

It is said that a controlling influence in establishing the age 366





Joseph C. Yates

JOSEPH C. YATES.

(1768-1837).

Jurist and Statesman; Mayor of Schenectady; State Senator; Justice Supreme Court, 1808-22; Governor of New York, 1823-25.

limit of sixty years for members of this court was the persistent continuance in office of Chief Justice Horsmanden, of the Colonial and Revolutionary periods, who declined to vacate his seat until long after the infirmities of advanced age had impaired his abilities, despite all efforts that were made to persuade him to resign. It was not considered wise by the framers of the first constitution to allow another opportunity for thus tying up the business of the court by reason of the obstinacy of any of its judges.

In May, 1784, the first grand jury of the oyer and terminer branch of the supreme court meeting after the Revolution, sat in the city of New York. James Duane, who was then mayor of the city, was associated with Judge John Sloss Hobart in the commission issued to hold the oyer and terminer. Duane delivered the charge to the grand jury.

In 1785, by act of the legislature, terms of the supreme court were ordered to be held in Albany for two weeks beginning the first Tuesday of July, and for three weeks beginning the third Tuesday in October; the terms for the city of New York were for two weeks beginning the third Tuesday of January, and for three weeks beginning the third week in April. The clerk of the court had his office in New York, and he had a deputy in Albany. The deputy was required to send all papers to New York once every six months.

In April, 1807, the justices of the court appointed a clerk for Oneida county, with an office in Utica. After March 30, 1811, the terms of the court began on the first day in May and the third Monday in October, in New York City, and the first day in January and the first day in August, in Albany, each term being for a period of two weeks.

By an act of the legislature passed April 19, 1786, one or more of the justices of the supreme court were required to

hold during the vacations, and more frequently if necessary, circuit courts in each of the counties of the State for the trial of all issues triable in the respective counties. Proceedings were to be returned to the supreme court to be recorded, and there judgment was given according to law. The justices were also empowered to take assize of novel disseizin, or any other assize in their discretion, at the circuit. An act passed February 22, 1788, provided for the holding of courts of over and terminer by the justices at the same time with the circuit, to continue until all business before it was disposed of. In 1789 the legislature exacted that all issues triable by a jury might be tried at the circuit or at the bar of the supreme court without any order for the purpose. In 1797, however, it was provided that an order should be necessary for such trials. In February, 1796, the office of the clerk of the circuit was abolished, and the duties of that office were devolved upon the respective county clerks. In February of the following year the legislature passed a law directing that the court should annually, at its April term, designate one of its number to hold circuit courts—one in the western, one in the eastern, one in the middle, and one in the southern district.

In 1823 the legislature passed an act providing that the terms of court for the city of New York should begin on the third Mondays of February and October, and on the first Mondays of May and August. For the city of Utica there was a term in August, and for Albany, terms in February and October. If the business of the court was heavy, the terms could be continued for four weeks; otherwise, and in the case of no returns, the term was for two weeks only.

Subsequently, the terms were set for the first Mondays of January, May and July, and the third Monday of October. The 368





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WILLIAM L. MARCY.

(1786-1857).

Jurist and Statesman; State Comptroller, 1823-29; Justice Supreme Court, 1829-31; United States Senator, 1831-33; Governor, 1833-39; Secretary of War in Polk's Cabinet; Secretary of State in Pierce's Cabinet.

January and October terms were held at the capitol in Albany, the May term at the city hall in New York, and the July term at the academy in Utica. These terms of court lasted for five weeks. During the last week no argument was heard except by consent of parties and counsel, and no process was issued or returned after the second Saturday, except subpoenas, attachments, and habeas corpus. In 1841 the October term was changed from Albany to Rochester, and at the same time one of the justices was required to sit at the capitol in Albany, and hear and decide such non-enumerated cases as should arise, except those to be heard at term time.

In 1778 the salary of the chief justice was \$750 New York currency, and the salaries of the associate justices in the same period were \$500 per year. The associate justices also received forty shillings per day for attendance on over and terminer, and for travel fees. From time to time in subsequent years, the salaries were increased, and in 1797 all the justices received \$2,000 each per annum. In 1812 they received \$3,000 per annum, and their terms of service were three years. In 1816 each received \$4,500 per annum, and there was no limit to the term of service. In April, 1816, the legislature enacted that the justices residing in New York City should be entitled to fees for transacting chamber business and for services pertaining to their offices. Two years later the salaries were reduced to \$3,500 each, and in the ensuing year a further reduction was made to \$3,000. After 1823, the annual salary of each judge was \$2,000; in 1835 this was increased to \$2,500, and in 1839 was made \$3,000, and permanent. By the act of 1835, all compensations for travel or for attendance as members of the court of errors was abolished.

On February 6, 1798, James Kent was appointed to be a 369

justice of this court. Soon after taking his seat he introduced the practice of presenting a written opinion on all matters which were considered of sufficient importance to make the decision of the court of value as a precedent. This practice added greatly to the value and importance of the court, and it became an essential part of early American jurisprudence. It was soon adopted by other justices, and in 1804, George Caines, with a salary of \$850 a year, was appointed official reporter, to report and to publish the decisions of this court and also of the court for the correction of errors. From that time the Supreme Court Reports have been an indispensable part of the history of jurisprudence in this State.

During the colonial period, a separate exchequer court did not exist. Exchequer proceedings were in the supreme court or the court of chancery. By a legislative act passed February 9, 1786, the exchequer court was reorganized as a branch of the new supreme court of the state. The junior justice, or, in his absence, one of the puisne justices, was empowered to hold a court for the hearing and determination of all causes and motions concerning fines, forfeitures, issues, amercements and debts due to the people of the State according to law, and the cause of exchequer. It was ordered that exchequers should be held during every term of the supreme court, or during such part thereof as should be necessary, and in some place convenient to where the supreme court was sitting. Neither salaries nor fees were allowed to the justice who was holding this court on the ground of "his salary and fees as justice of the supreme court being considered as full compensation for his services in holding exchequer." A seal was ordered for the court, and William Popham was appointed clerk of the justices of the supreme court on July 17, 1786. On April 3, 1803, the law relating to





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MORGAN LEWIS.

(1754-1844).

Lawyer, Soldier, Statesman and Jurist; Member of Assembly; Attorney General; Chief Justice Supreme Court; Governor, 1805-6.

the court was reenacted with some changes. By the general act of repeal of December, 1828, the court was abolished on January 1, 1830. William Popham had retained his position as clerk during this entire period, from 1786 to 1830.

The chief justices of the supreme court during the first seventy years of the State government, and the dates of their appointment were: John Jay, May 8, 1777; Richard Morris, October 23, 1779; Robert Yates, September 28, 1790; John Lansing, Jr., February 15, 1798; Morgan Lewis, October 15, 1801; James Kent, July 2, 1804; Smith Thompson, February 3, 1814; Ambrose Spencer, February 29, 1819; John Savage, January 29, 1823; Samuel Nelson, August 31, 1831; Greene C. Bronson, March 5, 1845; Samuel Beardsley, June 28, 1847.

The associate or puisne justices, with the dates of their appointment, were: Robert Yates, May 8, 1777; John Sloss Hobart, May 8, 1777; John Lansing, Jr., September 28, 1790; Morgan Lewis, December 24, 1792; Egbert Benson, January 29, 1794; James Kent, February 6, 1798; John Cozine, August 9, 1798; Jacob Radcliff, December 27, 1798; Brockholst Livingston, January 8, 1802; Smith Thompson, January 8, 1802; Ambrose Spencer, February 3, 1804; Daniel D. Tompkins, July 2, 1804; William W. Van Ness, June 7, 1808; Joseph C. Yates, February 8, 1808; Jonas Platt, February 23, 1814; John Woodworth, March 27, 1819; Jacob Sunderland, January 29, 1823; William L. Marcy, January 21, 1829; Samuel Nelson, February 1, 1831; Greene C. Bronson, January 6, 1836; Esek Cowen, August 31, 1836; Samuel Beardsley, February 20, 1844; Freeborn G. Jewett, March 5, 1845; Frederick Whittlesey, June 30, 1847; Thomas McKissock, July 4, 1847.

By legislative act under the provisions of the Constitution of 1821, the State was divided into eight circuits, corresponding

to the eight senatorial districts as they then existed. In each circuit a judge was appointed in the same manner, and to hold office by the same tenure as a justice of the supreme court. He possessed the powers of the justice of the supreme court in chambers, and in the trial of issues joined in the supreme court, and in courts of over and terminer and jail delivery. Equity jurisdiction was conferred by the legislature, and it was further provided that appeals should be made to the chancellor. Two courts were held each year in each county, except in New York county, where four were held annually. The county clerks were clerks of the circuit courts except in New York, where the clerk of the supreme court was also clerk of the circuit court. In May, 1823, the circuit court adopted the following seal: In the center an open scroll surrounded by rays; the words "Equity" inscribed on the upper part of the scroll, and a sword and olive branch crossed upon the lower edge surrounded by the words "State of New York, Circuit Court."

Circuit judges held courts of over and terminer at the same time as the circuit courts were held. In the counties, at least two judges were associated with them in over and terminer. In the city of New York, the mayor, recorder and aldermen, or any two of them, sat with the presiding justice, and the same procedure was followed in Albany, Columbia and Rensselaer counties. In Schenectady, the mayor and aldermen sat with the presiding justice. The governor had power to issue commissions of over and terminer to supreme or circuit judges. The court of over and terminer had power by the grand jury to inquire into all crimes and misdemeanors in all counties, to try all indictments by a grand jury of the court of general sessions, and also to deliver the jails.

Following is a list of the circuit judges of the supreme court from 1823 to 1847, with the dates of their appointment:

WILLIAM MITCHEL.

(1801-1886).

Jurist; Justice Supreme Court First District, 1849-58; Judge Court of Appeals, 1856; Presiding Justice Supreme Court, general term, 1857.

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William Mitchell



First Circuit: Ogden Edwards, April 21, 1823; William Kent, August 17, 1841; John W. Edmonds, February 18, 1845.

Second Circuit: Samuel R. Betts, April 21, 1823; James Emott, February 21, 1827; Charles H. Ruggles, March 19, 1831; Selah B. Strong, March 27, 1846; Seward Barculo, April 4, 1846.

Third Circuit: William A. Duer, April 21, 1823; James Vanderpoel, January 12, 1830; John P. Cushman, February 9, 1838; Amasa J. Parker, March 6, 1844.

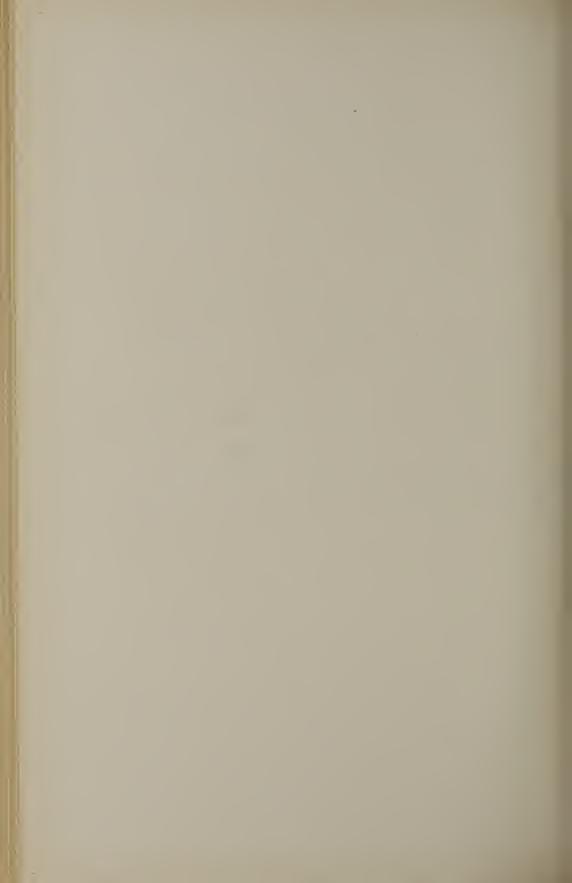
Fourth Circuit: Reuben H. Walworth, April 21, 1823; Esek Cowen, April 22, 1828; John Willard, September 3, 1836.

Fifth Circuit: Nathan Williams, April 21, 1823; Samuel Beardsley, April 12, 1834; Hiram Denio, May 7, 1834; Isaac H. Bronson, April 18, 1838; Philo Gridley, July 17, 1838.

Sixth Circuit: Samuel Nelson, April 21, 1823; Robert Monell, February 11, 1831; Hiram Gray, January 13, 1846.

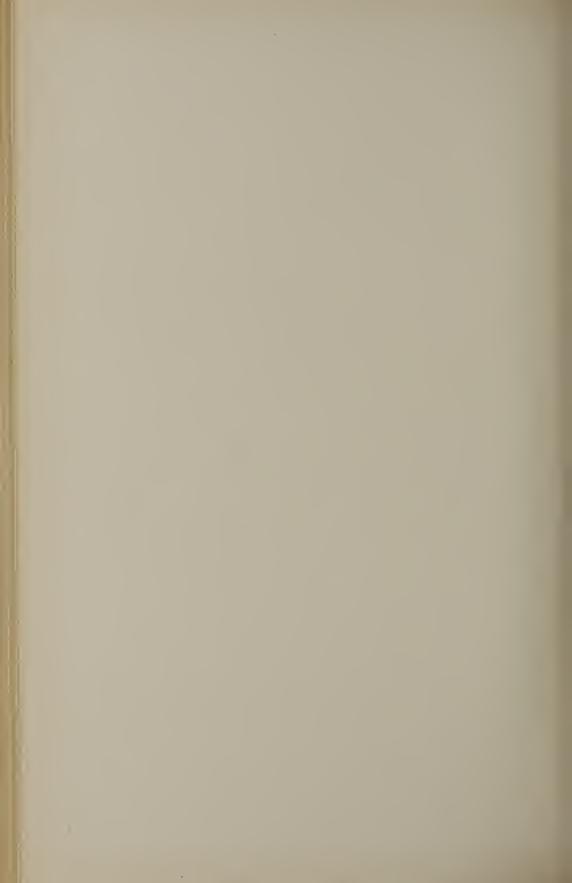
Seventh Circuit: Enos T. Throop, April 21, 1823; Daniel Moseley, January 16, 1829; Bowen Whiting, April 7, 1844.

Eighth Circuit: William B. Rochester, April 21, 1823; Albert H. Tracy, March 26, 1826; John Birdsall, April 18, 1826; Addison Gardiner, September 29, 1829; John B. Skinner, February 9, 1838; Nathan Dayton, February 23, 1838.



CHAPTER IX

Another Half Century of Development



CHAPTER IX

Another Half Century of Development

1850-1900

CHANGE IN THE METHOD OF SECURING JUDGES—THE APPOINTIVE SYSTEM IS ABANDONED AND ELECTION BY THE PEOPLE IS SUBSTITUTED—SUCCESS OF THE NEW PLAN—INSTITUTION OF A NEW COURT OF APPEALS—THE JUDGES ON THAT BENCH AND THE JUSTICES OF THE SUPREME COURT—END OF THE HISTORIC COURT OF COMMON PLEAS AND OF THE SUPERIOR COURT OF NEW YORK CITY—CHANGES IN THE FORM OF THE SUPREME COURT—EMINENT JUDGES OF THE PERIOD.

The middle of the nineteenth century was a turning point in the history of the judiciary of the State. Prior to that time the judges had been appointees of the governor, subject to the confirming powers of the senate. In a sense this was a continuance of the old autocratic system which had prevailed in the colonial period. Then the judges were created by the governor and council as representatives of the king and in slight degree only were subject to the popular legislature. Thus supported by royal prerogative they enjoyed pre-eminent distinction and exercised preeminent powers. It was perhaps natural that in the first years under the State government the influence of this system should still prevail. For the royally appointed governor and council, the popularly elected governor and senate had been substituted; while this change to democracy was complete, yet it is undoubted that the judges, looking directly to the governors for their authority,

still felt to a certain degree their superiority to the dominant power of the people as a whole. This sentiment extended to the legal profession generally as has been pointed out by many writers. One who has written much on the subject has said:—

"The qualifications of the lawyer class were of extreme importance under the first constitution of New York, and were so treated, for they might be called upon as lawyers to exercise political functions new to the history of their profession. Indeed, by a singular provision of this constitution, they were the only class in the state deemed competent to constitute the council of revision, which enjoyed the power of revising laws and a qualified negative on all legislation. Such an anomalous privilege did much to justify Mr. de Tocqueville's observation (now no longer true) to the effect that the lawyer class stood in America for the aristocracy of other countries. In New York the chancellor and the justices of the supreme court, under the first state constitution, possessed more power than the judges of any other modern political community of the world. They not only enjoyed the enormous powers and jurisdiction vested in the judges of the great British courts, but they sat in the final court of errors as well, and in addition had, practically for life, or good behavior, the old veto power on legislation inherited from the English crown. They thus, far more than any other class, succeeded to the old power of the crown over the province of New York. Allied to the interests of the manor proprietors, the judges could, under the first constitution, if they were so disposed, direct and control the entire government of the state. This fact, taken in connection with the very restricted character of the suffrage,-for only freeholders possessing considerable estates could then vote for governor or senators,-made the government of New York down to the eighteenth century a very unsatisfactory one, and republican largely in name. That such a form of government was tolerated as late as the year 1821 was largely due to the fact that the recipients of this enormous power were men of unusual accomplishments and of a private character never excelled in the history of the American states."1

For a long time there had been a growing popular discontent throughout the State in regard to this condition of affairs. The people felt that, even though in changing the royal governor for

^{1. &}quot;Constitutional and Legal History of New York in the Eighteenth Century" by Robert Ludlow Fowler, in "The Memorial History of the City of New York," vol. II., p. 627.

a governor of their own election they had achieved freedom, some problems in self government yet remained to be solved. They had not only the right to go further, but it seemed to be imperatively necessary to bring the courts nearer to themselves. Many criticisms of the method of appointment by the governor and the senate had been made and some of the ill results brought about by thus placing judges upon the bench were pointed out. More or less dissatisfaction with the constitution and the work of some of the courts existed, and, especially as regarded the court of chancery, the people began to feel that it was in many respects too far removed from them to always consider their best interests. It was also argued that the courts of common pleas were not as perfectly constituted as they should be, in some instances laymen and inferior lawyers having been appointed to positions on the bench. Sentiment had developed in favor of less prolonged terms of office for the judges, so that their continuance upon the bench should be more contingent upon their repeated elections when the people should have opportunity to approve or disapprove of their official conduct. A writer on this subject has said: "One thing is evident: the appointing system did not uniformly secure judges who were not politicians, nor save some of them from the popular belief and accusation that they continued to be politicians after reaching the bench."2

Due deference to these considerations influenced the constitutional convention of 1847 to decide that thereafter the judges, at least, of the important courts, should be elected instead of appointed. The success of this experiment of popular elections for the judges instead of their gubernatorial appointment was marked from the outset. Those who had looked for disaster from this method of procedure were confounded. It was apparent at once

^{2. &}quot;Public Service of the State of New York," vol. III., p. 25.

that the fears lest partisanship and politics should be injected into the selection of the judges and thus pervert the courts were wholly unfounded. In the first election those who were chosen to judicial position compared favorably, to say the least, with their predecessors who had been appointed by the governors. The best talent of the legal profession of the period was drawn upon for service upon the bench. Many individuals who were in nowise identified with politics were nominated and elected, and even those who had been active in political affairs before their elevation to the bench immediately left their politics behind. Many nominations were made quite regardless of politics, and all parties supported men who were on non-partisan tickets.

The spirit which was then exhibited so unexpectedly strong has ever since continued to characterize the attitude of the people toward the judicial system of the state. After nearly half a century of experience under this system a commentator upon the history of the court of appeals remarked, "It is believed by the members of the court and probably by the great mass of thoughtful citizens that the court under the original organization and now, is as free from political bias as the imperfections of human nature will allow, and that its decisions have never been liable to the charge of being controlled or tinged by partisan motive." Like words can be fittingly applied to the entire judicial system of the State as it has been since 1847 to the present time. The experiment of the middle of the century, radical as it was, resulted in a remarkable degree in the improvement of the personality of the judiciary, its usefulness and its high standing generally.

After 1847 the two original functions of the appellate court, that of the trial of impeachments and the review of cases on appeal, were separated. To a new court of appeals was assigned

the purely judicial functions of the old court. Whereas under the first two constitutions of the State the court for the trial of impeachments and correction of errors consisted of the president and members of the senate, the chancellor and the judges of the supreme court, the new court of appeals consisted of eight judges. Four of the judges were chosen at large by the electors of the state for terms of eight years each while the other four were selected from among those justices of the supreme court who had the shortest time to serve. Six justices were required for a quorum and the concurrence of five was necessary in order to give judgment. That judge who was elected by the State at large and had the shortest term to serve acted as chief judge. The clerk was elected by the people for a term of three years, while the reporter was appointed by the attorney general for a term of three years. Regarding the court of errors an eminent lawyer has said:

"By the provisions of the constitution of 1846 the time-honored court for the trial of impeachments and the correction of errors ceased to be, and in its stead was established our present final tribunal, the court of appeals. The former seemed ill-constituted, as it consisted of thirty-three presumably lay members (the lieutenant-governor and the senators), while there were but four law judges (the chancellor and the three judges of the supreme court). The chancellor did not sit on the hearing of appeals from his decisions, nor did the judges of the supreme court at the hearing on writs of errors from theirs. Yet the decisions of the court of errors ranked very high in the jurisprudence of the country. It always happened that some of the senators were able lawyers, and most of the others were practical men of business experience and sound judgment, and their strong good sense, blending with the learned wisdom of the judges, mitigated merely technical or over-rigid rules of law where they conflicted with substantial justice, and resulted in rational decisions on reasonable instead of harsh, application of those rules. As 'Mind governs matter', it followed that such of the other lay members of the court as had no knowledge and little judgment concurred in what their wise brethren did, and became practically as harmless as those worthy rural dignitaries whom we have all seen sitting solemn and silent on the bench by

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the side of the circuit judge. I believe that, by the general voice of the bar, the court of errors was one of the very strongets judicial tribunals in this country."³

Reorganized under the provisions of the amendment to the constitution adopted in 1869 the court was composed of a chief judge and six associates elected from the State at large and holding office for a term of fourteen years, beginning with the year 1870. Provision was also made for a commission of appeals consisting of four judges of the old court, and a fifth commissioner appointed by the governor with a term of office limited to three years. To this commission was delegated the duty of completing the work which had been left over by the preceding court of appeals. Subsequently the term of office was extended two years pursuant to an amendment of the constitution adopted in 1872, and during that time it undertook further work which was sent to it from time to time by the court. It expired in July, 1875.

The commissioners of appeals, with the dates of appointment were: John A. Lott, July 5, 1870; Hiram Gray, July 5, 1870; William H. Leonard, July 5, 1870; Robert Earl, July 5, 1870; Ward Hunt, July 5, 1870; Alexander S. Johnson, January 7, 1873; John H. Reynolds, January 10, 1873; Theodore W. Dwight, January 7, 1874.

In the first election, in 1870, the following were elected judges of the new court of appeals: Sanford E. Church, William F. Allen, Rufus W. Peckham, Martin Grover, Charles A. Rapallo, Charles Andrews and Charles J. Folger. They entered upon their duties on the first Monday of July, 1870. Chief Judge Church and Associate Judges Allen, Peckham, Grover and Rapallo were

^{3.} Benjamin D. Silliman in an address delivered at a complimentary dinner May 24, 1889, tendered to him by the members of the bar of New York and Brooklyn in observance of the Sixtieth anniversary of his admission to practice.



New Court of Appeals-1870

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NEW COURT OF APPEALS, 1870.

From left to right, seated: 1. Charles J. Folger. 2. William F. Allen. 3. Sanford E. Church, Chief Judge. 4. Martin Grover. 5. Rufus W. Peckham, Senior. Standing: 1. Charles Andrews. 2. E. O. Perrin, Clerk of Court. 3. Charles A. Rapallo.

Democrats, while Associate Judges Andrews and Folger were Republicans. Chief Judge Church and Associate Judges Allen, Peckham, Grover and Rapallo died in office. Judge Folger resigned in 1881, when he became secretary of the treasury under President Arthur. Judge Andrews was re-elected and served until he was compelled to retire by the constitutional age limit.

Prior to 1859 each judge of the court of appeals received an annual salary of twenty-five hundred dollars. Subsequent to this their salaries were three thousand dollars each. In 1870 an act of the legislature fixed the salary of the chief judge of the court at seven thousand five hundred dollars, and that of each of the associate judges at seven thousand dollars per year. Subsequently the legislature established the salary of the chief judge of this court at ten thousand five hundred dollars, and the salaries of the associate judges at ten thousand dollars, with an allowance to each of three thousand seven hundred dollars annually for their expenses. The court is almost continually in session, except during the summer vacation period, it taking such recesses from time to time as it may decide upon. The office of the clerk of the court, who has a salary of five thousand dollars, is in the capitol at Albany, and the reporter of the court also has a salary of five thousand dollars. A full account of the provisions establishing this court, its jurisdiction, composition and so on, will be found in a section of this work treating of the constitutional history of the State.

The judges of the old court of appeals from its establishment in 1847 until 1870, with the dates of their election or appointment. were: Freeborn G. Jewett, June 7, 1847; Greene C. Bronson, June 7, 1847; Charles H. Ruggles, June 7, 1847; Addison Gardiner, June 7, 1847; Freeborn G. Jewett, November 6, 1849; Samuel A. Foote, April 11, 1851; Alexander S. Johnson, November 4, 1851; Charles H. Ruggles, November 8, 1853; Hiram

Denio, June 23, 1853; George F. Comstock, November 7, 1853; Samuel L. Selden, November 7, 1855; Hiram Denio, November 3, 1857; Henry E. Davies, November 8, 1859; William B. Wright, November 5, 1861; Henry R. Selden, July 1, 1862; John K. Porter, January 2, 1865; Ward Hunt, November 7, 1865; Martin Grover, November 5, 1867; Lewis B. Woodruff, January 4, 1868; Charles Mason, January 20, 1868; Robert Earl, November 2, 1869; John A. Lott, November 2, 1869.

The judges who were first elected to the court of appeals under the Constitution of 1846 were men of high standing and of excellent legal and judicial ability, even if they did not attain to the pre-eminent distinction that characterized the careers of some of their predecessors.

Freeborn G. Jewett, who was first on the list of elected judges and thus became chief judge, was a native of Connecticut, where he was born in 1791. He had a common school education and after his admission to practice at the bar took a foremost position both in his profession and in public affairs. Before he was elevated to the bench he held several offices of a political character, being an inspector of state prisons, a member of the assembly, a member of congress, and also a county judge and a circuit judge. Elected to the court of appeals in 1847 for a term of two years, he was re-elected in 1849, and resigned from the bench in 1853. His contemporaries regarded him as a judge of strong intellect and the opinions which he delivered while on the bench, construing the code of civil procedure, were especially clear, and ever since his day have been cited as precedents. He died in New York in 1858.

Greene Currier Bronson, second on the list of the members of this court, elected in 1847, was born in Oneida, New York, in 1789, and establishing himself in Utica became one of the leading

lawyers of that section of the State. His activities were both political and professional. He was elected surrogate of Oneida county in 1819, a member of the assembly in 1822, appointed attorney general in 1829, in which position he served seven years; and a puisne judge of the supreme court in 1836. In 1845 he became chief justice of the supreme court, and two years later a member of the court of appeals. Retiring from the bench in 1851, he removed to New York city and was collector of the port for the year following 1853. In 1855 he was a Democratic candidate for governor of the State, and from 1860 to 1863 corporation counsel of the city of New York. He was held in high esteem by both bench and bar, and upon the occasion of his death, which occurred in Saratoga, New York, September 3, 1863, the court of appeals in a minute adopted at that time paid him the following tribute:

"Especially in the department of judicial duty he was justly pre-eminent. His opinions, both in the supreme court and in this court, are models of judicial excellence. In conciseness and perspicuity of expression, in terseness and directness of style, in compactness and force of logic and in sturdy vigor of intellect, they are unsurpassed. Careful and deliberate in the formation of his conclusions, he was from the very strength of his convictions, tenacious and confident of their correctness and courageous and resolute in their expression. Firm in integrity of purpose and action, bold in the denunciation and exposure of fraud, he was at the same time gentle and genial in all the relations of friendship and private life."

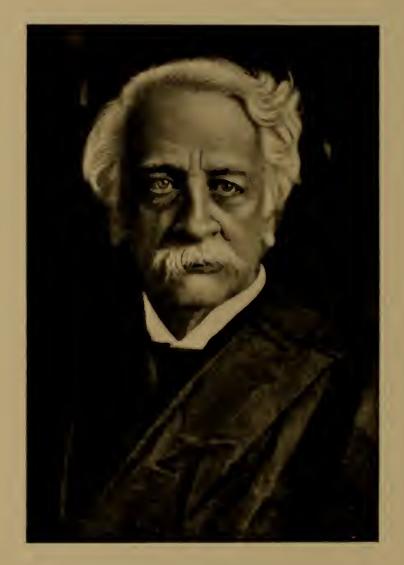
Charles H. Ruggles, the third on the list of the new judges of this court, was born in Connecticut, February 10, 1789. He was the son of Samuel Bulkeley Ruggles, a successful lawyer of New York city, and active and prominent in the public affairs of the State in the middle of the nineteenth century, being especially distinguished for the attention which he gave to the Erie Canal, both as a private citizen and as a canal commissioner. He began the practice of law in Kingston, New York, and early entered

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into political life, being a member of the assembly in 1820, and a member of congress from 1821 to 1823. Placed upon the circuit bench of the second circuit, he made an excellent reputation as a jurist, but leaving that office, again became a member of the legislature and was a delegate to the constitutional convention of 1846, and chairman of the committee of that body which prepared the judiciary article. He sat on the bench of the court of appeals from 1847 until his resignation in 1855. He died in Poughkeepsie, New York, in 1865.

Addison Gardiner, who was associated with the three preceding judges on the bench of this court from 1847, was a native of New Hampshire, where he was born in 1797. He was graduated from Union College, in 1819, and then began the study of law in the town of Maulius, to which place his father had removed from New Hampshire. He was admitted to the bar in 1822, and removed to Rochester, where he began a career which made him one of the most distinguished lawyers of western New York. He was early chosen a justice of the peace; was appointed district attorney from Monroe county in 1825, and afterwards began practice in partnership with Samuel L. Selden and Henry R. Selden, the firm becoming one of the most famous in Rochester and in that section of the State. In 1829 Mr. Gardiner was appointed circuit judge for the eighth circuit, but after sitting upon the bench for nine years he resigned and resumed practice in Rochester. In 1844 he was elected lieutenant governor of the State on the ticket with Silas Wright. While he was serving as lieutenant governor, in 1847, he was chosen judge of the court of appeals, and resigned his State office. Serving as judge of the court of appeals until 1855, he declined a re-election and returned to practice in Rochester, where he remained until his death. After his retirement to private practice it was said of him that "he was





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RUFUS W. PECKHAM.

(1838-1909).

Distinguished Lawyer and Jurist; District Attorney Albany County, 1868-70; Corporation Counsel of Albany for several years; Justice Supreme Court of New York, 1883-86: Judge of the Court of Appeals, 1886-95; Justice of United States Supreme Court, 1895-1909.

regarded as the Nestor of the bar of western New York, and lawyers constantly consulted him when in difficulties with their own cases. He played the role of a distinguished barrister in the latter years of his life."

The chief judge and the associate judges after 1870, with the dates of their election or appointment were:

Chief judges: Sanford E. Church, May 17, 1870; Charles J. Folger, May 20, 1880; Charles Andrews, November 10, 1881; William C. Ruger, November 7, 1882; Robert Earl, January 25, 1892; Charles Andrews, November 7, 1892; Alton B. Parker, November 2, 1897; Edgar M. Cullen, November 8, 1904.

Associate judges: William F. Allen, May 17, 1870; Martin Grover, May 17, 1870; Rufus W. Peckham, May 17, 1870; Charles A. Rapallo, May 17, 1870; Charles J. Folger, May 17, 1870; Charles Andrews, May 17, 1870; Alexander S. Johnson, December 29, 1873; Theodore Miller, November 3, 1874; Robert Earl, November 5, 1875; Samuel Hand, June 10, 1878; George F. Danforth, November 5, 1878; Francis M. Finch, May 25, 1880; Benjamin F. Tracy, December 8, 1881; Rufus W. Peckham, November 2, 1886; John Clinton Gray, January 25, 1888; Denis O'Brien, November 5, 1889; Isaac H. Maynard, January 20, 1892; Edward T. Bartlett, November 7, 1893; Albert Haight, November 6, 1894; Irving G. Vann, December 31, 1895; Celora E. Martin, November 6, 1895; Judson S. Landon, January 1, 1900, Edgar M. Cullen, January 1, 1900; William E. Werner, January 1, 1900; Willard Bartlett, January 1, 1906; Frank H. Hiscock, January 1, 1906; Emory A. Chase, January 1, 1906.*

^{*}Judges Landon, Cullen, Werner, Willard Bartlett, Hiscock and Chase were justices of the supreme court designated by the governor at the dates named to serve as associate judges of the court of appeals, pursuant to section 7, article 6 of the Constitution. Judges Cullen, Werner and Willard Bartlett were afterwards elected to the court to fill vacancies.

Sanford E. Church, who was the first chief judge of the new court, was born in New York city, April 18, 1815, and died in Albion, New York, May 14, 1880. He had no collegiate training and his legal knowledge was based on a sound academic education, supplemented by independent studies. Beginning the practice of law in the town of Albion, he soon attained excellent reputation as a practitioner and also was prominent in politics, allying himself with the Democratic party. For more than a quarter of a century, his political activities overshadowed his legal pursuits and attainments. In 1842 he was a member of the assembly from Orleans county, and four years later was elected district attorney of the same county. From 1851 to 1855 he was lieutenant governor of the State, and in 1858 and 1859 State comptroller. In 1862 he was defeated in the campaign which he prosecuted for member of congress and the next year he met defeat again when he was a candidate for comptroller. A delegate to the constitutional convention of 1867 he was chairman of the committee on finance.

His election as chief judge of the court of appeals was dubiously regarded by a considerable portion of the people of the state. Opposition to him was based upon the fact that his career had been simply that of a politician, and that he had had no previous judicial experience and was not rated as a particularly learned lawyer. It was considered that the element of partisanship had entered too strongly into his candidacy and election, and that his party supporters had elevated him to the bench more from political motives than for any general regard for the public interest. But in this respect his friends and the supporters of good government throughout the state were agreeably disappointed. His career as a judge was remarkably clear from any suspicion of political perversion, and he filled the office to which he had been chosen with pre-eminent distinction and to the approval of the

profession and the public generally until his sudden death in 1880. The opinions delivered by him from the bench were brief, but belonged to the first order of judicial literature, being especially marked by simplicity and clearness of expression. It has been well said of him that "he was recognized by bench and bar as the very model of the chief justice, well founded in learning, of broad, comprehensive modes of thought, sound judgment, untiring industry and unwearied courtesy."

Charles J. Folger, who was at the time serving as an associate judge of the court of appeals, was promoted to the place of chief judge upon the death of Chief Judge Church. He was born on the island of Nantucket April 16, 1818, and graduated from Geneva (now Hobart) College at the age of eighteen, at the head of his class. Some of his friends used to say that he was the only one in the class, but he always insisted that there was another and that the question of who was at the head depended upon which way the class was counted. He was admitted to the bar in Albany in 1839, practiced his profession in Lyons and afterwards in Geneva and took high rank as a lawyer. At twenty-five he was chosen to the bench of the common pleas of Ontario county and was county judge of that county from 1852 to 1856. was a State senator from 1861 to 1869, was chairman of the judiciary committee of the senate and president pro tempore thereof for four years. He was also a member of the constitutional convention of 1867 and chairman of its judiciary com-Although he had been elected chief judge in 1880, in the following year he resigned his high judicial office to accept the position of Secretary of the Treasury in President Arthur's cabinet. He was defeated for governor in 1882 by Grover Cleveland. He continued at the head of the Treasury department

^{4. &}quot;The Public Service of the State of New York," vol. III, p. 36.

until his death, September 4, 1884. Of him the late Irving Browne, long an intimate acquaintance and friend wrote (2 Green Bag, 328):—

"There have been greater legal minds in this country and on this bench; but Judge Folger was an extremely accomplished legal scholar, and a profound and equitable judge. In addition, he was a grave and wise statesman, an elegant scholar in literature, an affectionate and faithful friend, a noble and unblemished man. There is little need to speak of his character which was a synonym for integrity, candor, fearlessness, firmness, and devotion. It is much that a man goes through a long public life without incurring a single hostile imputation; it is more that when he is dead and gone, every survivor, foe as well as friend, will rise up and testify that he never deserved any. Even when he was made the victim of an overwhelming denunciation of political methods and party intriguers, no breath ever tarnished his fair fame. * * * Of Judge Folger's learning, research, wisdom and acuteness, and of his original and peculiarly forcible and felicitious style of writing, the pages of our law reports bear most ample witness."

Charles Andrews was appointed chief judge upon the resignation of Judge Folger in 1881. In 1882 he was the candidate of the Republican party for the office, but in consequence of the factional quarrels of his party that year, he with the rest of his ticket, was defeated. He was born in Whitestown, N. Y., May 27, 1827, admitted to the bar in 1849, district attorney of Onondaga county 1853-56, three times mayor of Syracuse and a delegate at large to the constitutional convention of 1867. He was elected associate judge of the court of appeals in 1870. At the expiration of his term of office in 1884, he was nominated by both parties and re-elected, and served in the court for many years with great industry and ability. In 1892, on the death of Chief Judge Ruger, he was nominated by both parties and elected chief judge and served as such until he retired January 1, 1898, having reached the constitutional age limit. He is still living in Syracuse at an advanced age, venerated and respected by all.

William Crawford Ruger, who was elected chief judge in 1882, on the resignation of Judge Folger, was a lawyer of high rank. He was born in Bridgewater, Oneida county, January 30, 1824, admitted to the bar in Utica in 1853, removed to Syracuse, where he practiced his profession with great success until his election as chief judge in 1882 over Judge Andrews, his next door neighbor. He presided over the court with dignity and patience, and wrote very voluminous opinions bearing evidence of great research and careful study. He died January 14, 1892.

Robert Earl succeeded Judge Ruger as chief judge, having been promoted by Governor Flower to the vacancy caused by the latter's death, and served as such until the age limit compelled him, on December 31, 1894, to retire from the bench. He was chief judge of the old court of appeals at the time it was displaced by the new court in 1870, and under the constitution he became a member of the commission of appeals and served as such until it concluded its work on July 1, 1875. In November of that year he was appointed associate judge of the court by Governor Tilden in place of Martin Grover deceased. In the following year he was elected for a full term and reelected in 1890, having been nominated by both parties. Before serving in the court of appeals he had been surrogate and county judge of his county. He was born in Herkimer, September 10, 1824, and died there December 2, 1902. No man better equipped for judicial service ever sat upon the bench. He had a remarkable memory and performed a vast amount of work with apparent ease, and the reports of the court are illumined by a great number of opinions during his long career upon the bench, covering every branch of the law, which testify to his great ability and untiring industry as a judge.

Alton B. Parker was elected in 1897 to succeed Judge

Earl as chief judge. He was at the time of his election a justice of the supreme court for the Third Judicial District, having been appointed by Governor Hill to that position in 1885 to fill the vacancy caused by the death of Justice Theodric R. Westbrook. In 1882 he was elected for a full term. While a justice of the supreme court he served four years as associate judge of the Second Division of the court of appeals, three years as an associate justice of the general term of the First Department, and for six months as a member of the appellate division in the same department. From 1877 until his appointment to the supreme court he was surrogate of Ulster county. He resigned his great office of chief judge in 1904 to accept the nomination by the Democratic party as its candidate for President of the United States. He dignified the office of chief judge and left the bench with the sincere regret of all his associates, and possessing the confidence of the bar and the people in his judicial fairness and ability. He is now practicing his profession in New York City. In 1906 he was elected president of the American Bar Association. He was born near Cortland, New York, May 12, 1852, and resides at Esopus, New York.

Edgar M. Cullen, the present chief judge, was born in Brooklyn, New York, December 4, 1843. He was graduated from Columbia College in 1860, and admitted to the bar in 1867. He was a volunteer in the civil war and rose from the rank of second lieutenant to that of colonel of volunteers, receiving his commission as colonel from Governor Morgan at the age of 19. He practiced law in Brooklyn for many years and was elected a justice of the supreme court in 1880 in the Second Judicial District, and was reelected in 1894, having been nominated by both parties. While serving on the bench of the supreme court he was designated by Governor Roosevelt, January 1, 1900, as

associate judge of the court of appeals. On the resignation of Judge Parker he was appointed chief judge by Governor Odell, and thereafter, in November, 1904, was elected to the office. He is rounding out a long judicial service in one of the highest judicial stations in the country, and measures up to the full in all the qualities essential to the adornment of his great office.

It would be fitting if detailed mention could be made of all those who have served as associate judges in this great court, for many of them served with great distinction and all of them worthily filled the high stations to which they were called, but the limits of this chapter forbid.

By an amendment to Section 6 of Article 6 of the Constitution adopted November 8, 1888, the governor was authorized to designate seven justices of the supreme court to act as associate judges of the court of appeals for the time being, and to form a second division of the court whenever the court should certify that there was such an accumulation of causes on the calendar that the public interests require a more speedy disposition thereof. The certificate was made and Governor Hill designated the following justices to such Second Division: - David L. Follett of the sixth district, George B. Bradley of the seventh, Joseph Potter of the fourth, Irving G. Vann of the fifth, Albert Haight of the eighth, Alton B. Parker of the third, and Charles F. Brown of the second. They organized and began their sessions March 5, 1889. Under the authority contained in the amendment they selected David L. Follett as chief judge. On November 28, 1891, Joseph Potter resigned and Judson S. Landon, of the fourth district, was appointed to take his place. They finished the work assigned to them in 1892, and the Second Division then ceased to exist.

The court of common pleas of the city and county of New York was one of the oldest courts in the country. After an existence of nearly two hundred and fifty years it was, on January 1, 1896, consolidated with and became a part of the supreme court of the State. Its history has been well written by Mr. James Wilton Brooks of the New York Bar.* To his valuable work are we indebted for much of the brief summary of some of its later history which we give here.

By act of the legislature in 1847 it was provided that the terms of the judges of both the court of common pleas and the superior court of the city of New York should expire in January, 1848, that thereafter the judges should be elected by the people for terms of six years, but that at the first election in June, 1847, the term should be for two, four and six years. In the ensuing election all the existing judges of the court of common pleas were elected and the allotment of terms of service resulted as follows: Michael Ulshoeffer, two years; Daniel P. Ingraham, four years; and Charles P. Daly, six years.

From 1821 until the time of its disestablishment in 1895 the court of common pleas was presided over by twenty-three judges. During that period there were four first judges—Irving, Ulshoeffer, Ingraham and Charles P. Daly; and there were three chief justices—Charles P. Daly, Richard L. Larremore and Joseph F. Daly. Two of the justices died while they were holding office, Robinson in 1879 and Allen in 1891. Judge Larremore retired from the bench in 1890 on account of ill health, and Chief Justice Charles P. Daly retired on account of age at the end of his sixth consecutive term of service. The terms of service of the justices were as follows: Charles P. Daly, forty-one years; Joseph F. Daly, twenty-five years; Daniel P. Ingraham, twenty years;

^{*&}quot;History of the Court of Common Pleas, New York," 1896.

JOHN T. IRVING.

(1778-1838).

Jurist; elder brother of Washington Irving; Member of Assembly; first Judge Court of Common Pleas, 1821-1838.

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John T. Irving



Richard L. Larremore, twenty years; John T. Irving, seventeen years; Michael Ulshoeffer, sixteen years; Miles Beach, sixteen years; Charles H. Van Brunt, fourteen years; George M. Van Hoesen, fourteen years; John R. Brady, thirteen years; Henry W. Bookstaver, eleven years; Hamilton W. Robinson, nine years; Frederick W. Loew, seven years; Henry Wilder Allen, seven years; Lewis B. Woodruff, six years; Henry Bischoff, Jr., six years; Roger A. Pryor, six years; William Inglis, five years; Henry Hilton, five years; Albert Cardozo, five years; Leonard A. Giegerich, five years; Hooper C. Van Vorst, one year; George C. Barrett, one year. Judges Joseph F. Daly, Beach, Bookstaver, Bischoff, Pryor and Giegerich comprised the bench when the court was finally dissolved. It has been well said of this court that it was

"noted from the fact that its justices have, with rare exceptions, been eminent jurists, and that every noted advocate in the city of New York has appeared at its bar. The original roll of the court from 1821 to 1848 during which period every aspirant to the bar of the city of New York had first to be admitted to practice in the common pleas, show almost every New York name which was prominent at that period whether in the legal, social or business world."

Judge Charles P. Daly, whose long service on the bench of this court made him particularly noteworthy, was a native of New York city, where he was born in October, 1816. In his boyhood he was occupied as a clerk in a mercantile house and also went to sea as a sailor before the mast. His intelligent qualities, however, soon asserted themselves, and devoting his spare hours to study he made such progress that in 1839 he was admitted to practice at the bar. In 1843 he served in the legislature of the

^{5. &}quot;History of the Court of Common Pleas of the City and County of New York," by James Wilton Brooks, p. 28.

State, and had he so desired might have advanced further in political life. His appointment to the bench of the court of common pleas came in 1844, and from that time until his retirement in 1885 his entire career was bound up in his judicial position. Appointed to the office in the first instance, he was elected to the same position for five times after the constitution made the office elective.

His services to the public were not, however, confined to his duties on the bench. During the Civil War, although a Democrat, he was frequently consulted by President Lincoln and other leaders of the national cause, and his advice was greatly depended upon in many instances. As a man of letters and a scientist he also won reputation, being held in the highest esteem by such men as Lord Brougham, Freiherr Von Bunsen and Baron Von Humboldt. He was one of the earliest members of the American Geographical Society, being its president for thirty-four years, and he was an honorary member of all the other great geographical societies of the world. He wrote much upon legal, scientific and literary subjects, being the author of several books and with essays, addresses and articles of varied and important character, a contributor to current publications. He died in September, 1899.

Upon the occasion of his retirement from the bench of the court of common pleas, a meeting of the bar of New York City was held, December 30, 1885, a tribute to him from his professional associates. On this occasion, speaking to the resolutions which were offered, William Allen Butler said:

"The resolutions fitly emphasize the long duration of his term of office now about to expire; a term longer by ten years than the judicial life of Lord Mansfield, and by nearly ten years that of Judge Story. *

* * The peculiar feature of the judicial life of Chief Justice Daly is





Charles P. Daly

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CHARLES P. DALY.

(1816-1899).

Jurist; Chief Justice Court of Common Pleas; President American Geographical Society.

that it has been spent in this single sphere of duty, within the limits of this city and the precincts of this court. To have served as associate judge, first judge and chief justice of the court of common pleas for the city and county of New York is to have held a foremost place as a judicial officer in the commercial center of the nation during the most eventful of our jurisprudence."

The court of common pleas was in many respects a very important one. Before it came cases of forfeited recognizances, the great part of lunacy proceedings, mechanics liens, litigation and insolvency assignments. Contested wills were tried by it before a jury. It also had jurisdiction over domestic corporations doing business in New York and over foreign corporations upon contracts that were made in the state. With the supreme court and the superior court, it had nearly all the naturalizing of voters in the county, and in its equity powers it was not inferior to the supreme court. Its appellate jurisdiction extended to appeals from its own decisions, and appeals from judgments in the city courts and the district courts of New York city. As its decisions were final, in a large class of cases, it determined the law so far as these courts were concerned on all matters presenting questions not distinctly adjudicated by the court of last resort. It was also a court for the impeachment of municipal and minor judicial officers. Among the cases which were heard and decided by it in its last named capacity, were those of David M. Cowdrey, in 1833; Special Justice John M. Bloodgood, in 1839; Special Justice Henry W. Merritt, in 1840; Special Justice Miln Parker, in 1841; Assistant Justice William Wiley and Special Justices George W. Matzel, Miln Parker and Ephraim Stevens, in 1842; Dr. Charles H. Jackson, Justice Gilbert, James B. Greenman and Special Justice Ebenezer Stevens, in 1843; Special Justice Joseph Haskell and William Waln Drinker, in 1845: Police

Clerk John B. Hasty, in 1846; Police Justice Patrick G. Duffy, in 1887, and Police Justice Patrick Diver in 1894.

From 1821 to 1854 the clerk of New York county acted as the clerk of the supreme court and the court of common pleas. In 1854 the legislature passed an act creating a clerk of the court of common pleas to be appointed by the judges. The first clerk under this act was Andrew Warner, who served for only one year, and who later in life was president of the Institution for the Savings of Merchants' Clerks. Benjamin H. Jarvis succeeded Andrew Warner, but like his predecessor retained the office for only one year, and in turn was succeeded by Nathaniel Jarvis, Jr., who served until 1889, when he resigned. The successor of Nathaniel Jarvis was Samuel Jones, who retired in 1892. Finally Alfred Wagstaff became clerk of the court in 1892 and held the position until 1896, when the court ceased to exist; he then became clerk of the appellate division of the supreme court of the first judicial department of the State.

The court ended its long existence December 31, 1895, under the provisions of the Constitution of 1894. The judges who were then seated upon its bench became justices of the supreme court.

The judges and associate judges of this court from the time that it succeeded the mayor's court in 1821, with the dates of their service, until the court was abolished in 1895, were as follows:

First Judges: John T. Irving, 1821-1838; Michael Ulshoeffer, 1838-1849; Daniel P. Ingraham, 1853-1858; Charles P. Daly, 1858-1871.

Chief Judges: Charles P. Daly, 1871-1885; Richard L. Larremore, 1885-1890; Joseph F. Daly, 1890-1895.

Associate Judges: Michael Ulshoeffer, 1834-1838; Daniel P. Ingraham, 1838-1853; William Inglis, 1839-1844; Charles P. Daly, 1844-1858; Lewis B. Woodruff, 1850-1856; John R.

Brady, 1856-1869; Henry Hilton, 1858-1863; Albert Cardozo, 1863-1868; Hooper C. Van Vorst, 1867-1868; George C. Barrett, 1868-1869; Frederick W. Loew, 1869-75; Charles H. Van Brunt, 1870-84; Hamilton W. Robinson, 1870-9; Richard L. Larremore, 1870-1885; Joseph F. Daly, 1870-1890; George M. Van Hoesen, 1876-90; Miles Beach, 1879-95; Henry Wilder Allen, 1884-91; Henry W. Bookstaver, 1885-95; Henry Bischoff, Jr., 1890-95; Roger A. Pryor, 1890-95; Leonard A. Giegerich, 1891-95.

An act was passed in 1828 (Chap. 137) to establish a superior court in the city of New York. In the fifty years prior to that time the population of the city had increased from fifty thousand to two hundred thousand people. The single justice of the supreme court then sitting in the city, even with the help of the three judges then serving in the court of common pleas, was unable to promptly dispose of the rapidly increasing amount of litigation pressing for determination. It took from twelve to fifteen months for a cause to be reached on the calendar of the supreme court, and there were about four hundred causes on it. Various remedies were suggested for the evil. It was proposed to enlarge the jurisdiction of the court of common pleas and to increase the number of its judges but some obstacles were in the way. After much consideration it was finally determined to ask the legislature to establish a new court possessing the jurisdiction of the supreme court in all civil cases. In response to this request the act referred to was passed. Under the act establishing the superior court, the governor with the consent of the senate was authorized to appoint a chief justice and two associate justices for the term of five years, and to fill vacancies as they occurred. The governor appointed Samuel Jones, the then chancellor of the

State, as chief justice, and Josiah Ogden Hoffman and Thomas J. Oakley, each of whom had served with distinction as attorney general of the State, as associate justices. The Constitution of 1846 provided that all judicial officers of cities as well as those of the state should be *elected* instead of appointed. The number of justices of the court was increased to six, by Chap. 124, Laws of 1848, and at the first charter election under that act in 1849 three additional justices for the court were chosen. Since that time, until the court was abolished by the Constitution of 1894, the court consisted of the chief justice and five associate justices.

Those who served as members of the court with their terms of service are as follows:

Chief Justices: Samuel Jones, 1828-1847; Thomas J. Oakley, 1847-1857; John Duer, 1857-1858; Joseph S. Bosworth, 1858-1863; Anthony L. Robertson, 1864-1869; John M. Barbour, 1870-1873; Claudius L. Monell, 1874-1876; William E. Curtis, 1876-1880; John Sedgwick, 1880-1896.

Associate Justices: Josiah Ogden Hoffman, 1828-1837; Ihomas J. Oakley, 1828-1847; Aaron Vanderpoel, 1842-1850; Lewis H. Sandford, 1849-1852; John Duer, 1849-1857; John L. Mason, 1849-1852; William W. Campbell, 1849-1856; Elijah Paine, 1850-1853; Joseph S. Bosworth, 1852-1858; Robert Emmett, 1852-; Murray Hoffman, 1853-1861; John Slosson, 1853-1859; Lewis B. Woodruff, 1855-1861; Edwards Pierrepont, 1857-1860; James Moncrief, 1859-1865; Anthony L. Robertson, 1859-1864; James W. White, 1860-1863; John M. Barbour, 1861-1870; Claudius L. Monell, 1861-1874; Samuel B. Garvin, 1862-; John H. M'Cunn, 1862-1872; Samuel Jones, 1866-72; Freeman J. Fithian, 1869; John J. Freedman, 1869-1875; James C. Spencer, 1869-; William E. Curtis, 1872-1876; John Sedgwick, 1872-1880; Hooper C. Van Vorst, 1872-

1886; Gilbert M. Speir, 1873-1881; Charles F. Sanford, 1876-1881; John J. Freedman, 1876-1895; Horace Russell, 1880-1883; William H. Arnoux, 1882; Richard O. Gorman, 1883; George L. Ingraham, 1883-1891; Philip H. Dugro, 1887-1895; David McAdam, 1890-1895; Henry A. Gildersleeve, 1891-1895; Henry R. Beekman, 1895.

The supreme court of New York may well rank as one of the oldest institutions in the State, as it had its origin nearly a hundred years prior to the Declaration of Independence. Pursuant to the act of the Provincial Assembly passed May 6, 1691, which established the court, provision was made for the appointment of five justices, a chief justice and four associates. There was conferred upon the court all the jurisdiction at law exercised by the courts of Kings Bench, Common Pleas and Exchequer in England. In the same act provision was made for a High Court of Chancery and for the appointment of a Chancellor.

The number of associate justices was reduced to two in 1701. Fifty-seven years thereafter, in 1758, another justice was provided for, making four in all, including the chief justice. The court as thus constituted continued down to the time of the Revolutionary War. The Constitution of 1777 did not in express terms create or continue the supreme court or the court of chancery. It rather treated them both as existing tribunals and recognized them as entitled to exercise the same powers and jurisdiction under the State government as they had previously exercised under the colonial. The supreme court was composed of but three members, the chief justice and his two associates. When the constitutional convention of 1821 met the court was composed of the chief justice and but three associates, one less than when the court was first organized 130 years before, although the State had then

developed into a commonwealth with 53 counties and with a population of nearly a million and a half, and the justices were required to go on the circuit when they were not sitting in banc at Albany, Utica or New York. The Constitution of 1821 authorized the legislature to divide the State into eight circuits, and for the appointment of a circuit judge for each, having the same tenure of office and substantially the same powers as the justices of the supreme court at chambers and in holding circuit courts and courts of oyer and terminer. In 1823 the legislature divided the state into eight circuits corresponding to the eight senate districts then existing, and eight circuit judges were appointed. The circuit courts thus constituted were continued until the changes effected under the Constitution of 1846. The names of those who held the office of circuit judge and the dates of their appointment are given in the preceding chapter.

The State was divided under the Constitution of 1846 into eight judicial districts, the office of circuit judge was abolished, and the judicial force of the supreme court was increased by the election of five justices in the New York district and four in each of the seven other districts, making thirty-three in all.

The justices had been increased in number from time to time until at the time of the adoption of the constitution proposed by the convention of 1894 there were forty-six justices in the State: seven in the first district, six in the second, five in the third, five in the fourth, six in the fifth, five in the sixth, six in the seventh and six in the eighth.

Under that constitution the superior court and the court of common pleas of New York, the superior court and the city court of Brooklyn, were abolished and the several justices of these courts transferred to the supreme court. Provision was also made for the election of twelve additional justices through-

out the State, so that with the 18 justices of the abolished courts transferred to it and the election of the 12 new justices the supreme court was reenforced by thirty new members. Pursuant to legislation enacted in 1906 and taking effect January 1st, 1907, 21 additional justices were provided for, so that the judicial force of the supreme court now consists of 97 justices. These are divided among the judicial districts as follows: first district, 30; second, 17; third, 6; fourth, 6; fifth, 8; sixth, 6; seventh, 7; eighth, 12, and ninth, 5.

Of the 97 justices 24 are now (1910) assigned to serve in the appellate divisions, 7 in each of the first and second departments and 5 in each of the third and fourth departments and 2 to serve in the court of appeals.

The trial and special terms of the court are held in parts in the larger cities of the State, the business having increased to such an extent that in New York City the trial term is held in twenty parts and the special term in eight, and in Brooklyn the trial term is held in seven parts and the special term in two, all sitting at the same time.

It is curious to note the contrast between these conditions and those existing at the time the Provincial Assembly passed the act creating the supreme court in 1691, as indicated by a single expression in that act: "The justices",—so declares the act—"must hold a term once every six months and noe oftener, on the first Tuesday of October and the first Tuesday of April annually at the city hall in the city of New York, provided they shall not sit longer than eight dayes."

Following is a list of the justices of the supreme court after 1847 with the dates of their election or appointment:

First District: Samuel Jones, 1847; Elisha P. Hurlbut, 1847; John W. Edmonds, 1847; Henry P. Edwards, 1847; Wil-

liam Mitchell, 1849; James G. Kings, Jr., 1851; James J. Roosevelt, 1851; Robert H. Morris, 1852; Thomas W. Clerke, 1853; Edward P. Cowles, 1855; Henry E. Davies, 1855; James R. Whiting, 1855; Charles A. Peabody, 1855; Daniel P. Ingraham, 1857; Josiah Sutherland, 1857; William H. Leonard, 1859; Benjamin W. Bonney, 1860; George G. Barnard, 1860; Thomas W. Clerke, 1861; Josiah Sutherland, 1863; Daniel P. Ingraham, 1865; Albert Cardozo, 1867; George G. Barnard, 1868; John R. Brady, 1869; George C. Barrett, 1871; William H. Leonard, 1872; Enoch L. Fancher, 1872; Noah Davis, 1872; Abraham R. Lawrence, 1873; Charles Donohue, 1873; John R. Brady, 1877; George P. Andrews, 1883; Charles H. Van Brunt, 1883; George C. Barrett, 1885; Edward Patterson, 1886; Morgan J. O'Brien, 1887; Abraham R. Lawrence, 1887; George L. Ingraham, 1891; Charles H. Truax, 1895; Frederick Smyth, 1895; Charles F. Mac Lean, 1895; John Sedgwick, 1896;* P. Henry Dugro, 1896;* John J. Freedman, 1896;* David McAdam, 1896;* Henry A. Gildersleeve, 1896;* Henry R. Beekman, 1896;* Joseph F. Daly, 1896; Henry W. Bookstaver, 1896; Henry Bischoff, Jr., 1896; Roger A. Pryor, 1896; Leonard A. Giegerich, 1896; Miles Beach, 1896; William N. Cohen, 1897; Charles H. Van Brunt, 1897; Francis M. Scott, 1897; James Fitzgerald, 1898; George P. Andrews, 1898; David Leventritt, 1898; George C. Barrett, 1899; James A. O'Gorman, 1899; James A. Blanchard, 1900; Edward Patterson, 1900; Philip Henry Dugro, 1900; John Proctor Clarke, 1900; Morgan J.O'Brien, 1901; Samuel Greenbaum, 1901; Alfred Steck-

^{*}Judge of the former superior court of the City of New York, who became a justice of the supreme court on January 1, 1896, for the remainder of his term, by virtue of Sec. 5, title VI, of the Constitution.

§Judge of the former court of common pleas of the City and County of New York, who became a justice of the supreme court, on January 1, 1896, for the remainder of his term, by virtue of Sec. 5, title VI, of the Constitution.

ler, 1901; Ernest Hall, 1902; William A. Keener, 1902; Edward E. McCall, 1902; Edward B. Amend, 1902; Vernon M. Davis, 1902; Henry Bischoff, 1903; Victor J. Dowling, 1904; Mortimer C. Addoms, 1905; George L. Ingraham, 1905; Henry A. Gildersleeve, 1905; Joseph E. Newburger, 1905; Edward S. Clinch, 1905; Matthew Linn Bruce, 1906; Leonard A. Giegerich, 1906; John W. Goff, 1906; Samuel Seabury, 1906; M. Warley Platzek, 1906; Peter A. Hendrick, 1906; John Ford, 1906; Charles W. Dayton, 1906; John J. Brady, 1906; Mitchell L. Erlanger, 1906; Charles L. Guy, 1906; James W. Gerard, 1907; Matthew Linn Bruce, 1908; Irving Lehman, 1908; Edward B. Whitney, 1909; Nathan Bijur, 1909; Edward J. Gavegan, 1909; Alfred Page, 1909.

Second District: Selah B. Strong, 1847; William T. Mc-Coun, 1847; Nathan B. Morse, 1847; Seward Barculo, 1847; John W. Brown, 1849; Selah B. Strong, 1851; William Rockwell, 1854; Gilbert Dean, 1854; James Emott, 1855; Lucien Birdseye, 1856; John W. Brown, 1857; John A. Lott, 1857; William W. Scrugham, 1859; John A. Lott, 1861; Joseph F. Barnard, 1863; Jasper W. Gilbert, 1865; William Fullerton, 1867; Stephen W. Fullerton, 1867; Abraham B. Tappen, 1867; Calvin E. Pratt, 1869; Joseph F. Barnard, 1871; Jasper W. Gilbert, 1873; Jackson O. Dykman, 1875; Calvin E. Pratt, 1877; Erastus Cooke, 1880; Edgar M. Cullen, 1880; Charles F. Brown, 1882; Willard Bartlett, 1883; Joseph F. Barnard, 1885; Jackson O. Dykman, 1889; Calvin E. Pratt, 1891; William J. Gaynor, 1893; Edgar M. Cullen, 1894; Martin J. Keogh, 1895; Wilmot M. Smith, 1895; William D. Dickey, 1895; Augustus Van Wyck, 1896;* Nathaniel H. Clement, 1896;* William J. Osborne, 1896;* William W. Goodrich,

^{*}Judge of the former City Court of Brooklyn, who became a justice of the supreme court on January 1st, 1896, for the remainder of his term, by virtue of Sec. 5, title VI, of the Constitution.

1896; Garret J. Garretson, 1896; Michael H. Hirshberg, 1896; Samuel T. Maddox, 1896; Jesse Johnson, 1897; Willard Bartlett, 1897; Frederick A. Ward, 1898; Almet F. Jenks, 1898; Josiah T. Marean, 1898; William J. Kelly, 1903; Joseph A. Burr, 1904; Walter H. Jaycox, 1906; Edward B. Thomas, 1906; Joseph Aspinall, 1906; Frederick E. Crane, 1906; Lester W. Clark, 1906; George B. Abbott, 1906; William J. Carr, 1906; Townsend Scudder, 1906; William J. Gaynor, 1907; Abel E. Blackmar, 1908; Luke D. Stapleton, 1908; Harrington Putnam, 1909; Isaac M. Kapper, 1909.

Third District: Ira Harris, 1847; Malbone Watson, 1847; Amasa J. Parker, 1847; William B. Wright, 1847; Ira Harris, 1851; Malbone Watson, 1853; George Gould, 1855; Deodatus Wright, 1857; Henry Hogeboom, 1857; William B. Wright, 1859; Rufus W. Peckham, 1861; Theodore Miller, 1861; Charles R. Ingalls, 1863; Henry Hogeboom, 1865; Theodore Miller, 1869; William L. Learned, 1869; Charles R. Ingalls, 1871; Peter S. Danforth, 1872; Theodoric R. Westbrook, 1873; Austin Melvin Osborn, 1875; Rufus W. Peckham, 1883; William L. Learned, 1884; Alton B. Parker, 1885; Charles R. Ingalls, 1885; Samuel Edwards, 1887; Stephen L. Mayham, 1887; Edgar L. Fursman, 1889; D. Cady Herrick, 1891; Alden Chester, 1895; Emory A. Chase, 1896; Alphonso T. Clearwater, 1898; James A. Betts, 1898; Aaron V. S. Cochrane, 1901; Wesley O. Howard, 1902; Gilbert D. B. Hasbrouck, 1904; George H. Fitts, 1905; Alden Chester, 1909; Randall J. Le Boeuf, 1909.

Fourth District: Daniel Cady, 1847; Alonzo C. Paige, 1847; John Willard, 1847; Augustus C. Hand, 1847; Daniel Cady, 1849; Cornelius L. Allen, 1851; Amaziah B. James, 1853; Augustus Bockes, 1855; Alonzo C. Paige, 1855; Enoch H. Rosekrans, 1855; Platt Potter, 1857; Augustus Bockes, 1859; Amaziah B.

James, 1861; Platt Potter, 1865; Augustus Bockes, 1867; Amaziah B. James, 1869; Joseph Potter, 1871; Judson S. Landon, 1873; Augustus Bockes, 1875; William H. Sawyer, 1876; Charles O. Tappan, 1877; Frothingham Fish, 1883; Joseph Potter, 1885; Judson S. Landon, 1887; John R. Putnam, 1887; S. Alonzo Kellogg, 1890; Leslie W. Russell, 1891; Martin L. Stover, 1891; Chester B. McLaughlin, 1895; James W. Houghton, 1899; Edgar A. Spencer, 1901; John M. Kellogg, 1902; Henry T. Kellogg, 1903; Charles C. Van Kirk, 1905; Chester B. McLaughlin, 1909.

Fifth District: Charles Gray, 1847; Daniel Pratt, 1847; Philo Gridley, 1847; William E. Allen, 1847; Frederick W. Hubbard, 1849; Daniel Pratt, 1851; William J. Bacon, 1853; William F. Allen, 1855; Joseph Mullen, 1857; LeRoy Morgan, 1859; William J. Bacon, 1861; Henry A. Foster, 1863; Joseph Mullen, 1865; LeRoy Morgan, 1867; Charles H. Doolittle, 1869; George A. Hardin, 1871; Joseph Mullen, 1873; Milton H. Merwin, 1874; James Noxon, 1875; John C. Churchill, 1881; Irving G. Vann, 1881; George N. Kennedy, 1883; Pardon C. Williams, 1883; George A. Hardin, 1885; Milton H. Merwin, 1888; Maurice L. Wright, 1891; Peter B. McLennan, 1892; Irving G. Vann, 1895; William E. Scripture, 1895; Frank H. Hiscock, 1896; Pardon C. Williams, 1897; William S. Andrews, 1899; Watson M. Rogers, 1902; Irving R. Devendorf, 1905; Peter B. McLennan, 1906; Pascal C. J. De Angelis, 1906; Edgar S. K. Merrill, 1909.

Sixth District: William H. Shankland, 1847; Hiram Gray, 1847; Charles Mason, 1847; Eben B. Morehouse, 1847; William H. Shankland, 1849; Schuyler Crippen, 1850; Levinus Monson, 1850; Hiram Gray, 1851; Charles Mason, 1853; Ransom Balcom, 1855; William W. Campbell. 1857; John M. Parker, 1859; Charles Mason, 1861; Ransom Balcom, 1863; Douglas Boardman, 1865; John M. Parker, 1867; William Murray, Jr.,

1867; Ransom Balcom, 1871; Edwin Countryman, 1873; Douglas Boardman, 1873; David L. Follett, 1874; William Murray, 1877; Celora E. Martin, 1877; H. Boardman Smith, 1883; Francis R. Gilbert, 1887; Charles E. Parker, 1887; Gerrit A. Forbes, 1887; David L. Follett, 1888; Walter Lloyd Smith, 1888; Celora E. Martin, 1891; Burr Mattice, 1895; George F. Lyon, 1895; Albert H. Sewell, 1899; Charles E. Parker, 1901; Gerrit A. Forbes, 1901; Walter Lloyd Smith, 1902; Nathan L. Miller, 1903; Albert F. Gladding, 1906; Henry B. Coman, 1906; George F. Lyon, 1909.

Seventh District: Thomas A. Johnson, 1847; John Maynard, 1847; Henry Welles, 1847; Samuel L. Seldon, 1847; Thomas A. Johnson, 1849; Henry W. Taylor, 1850; Theron R. Strong, 1851; Henry Welles, 1853; E. Darwin Smith, 1855; Thomas A. Johnson, 1857; Addison T. Knox, 1859; Henry Welles, 1861; James C. Smith, 1862; E. Darwin Smith, 1863; Thomas A. Johnson, 1865; James C. Smith, 1867; Charles C. Dwight, 1868; E. Darwin Smith, 1871; David Rumsey, 1873; James C. Smith, 1875; George W. Rawson, 1876; Charles C. Dwight, 1877; James L. Angell, 1877; Francis A. Macomber, 1878; William Rumsey, 1880; George B. Bradley, 1883; William H. Adams, 1887; John M. Davy, 1888; Charles C. Dwight, 1891; Francis A. Macomber, 1892; George F. Yeoman, 1893; William Rumsey, 1894; William E. Werner, 1894; James W. Dunwell, 1895; Edwin A. Nash, 1895; Adelbert P. Rich, 1900; John F. Parkhurst, 1901; William H. Adams, 1901; John M. Davy, 1902; James A. Robson, 1903; Nathaniel Foote, 1905; Arthur E. Sutherland, 1905; William W. Clark, 1906; George A. Benton, 1907; Samuel N. Sawyer, 1907.

Eighth District: James G. Hoyt, 1847; James Mullet, 1847; Seth E. Sill, 1847; Richard P. Marvin, 1847; James G. Hoyt, 408

1849: Moses Taggart, 1851; James Mullet, 1851; Levi F. Bowen, 1852; Benjamin F. Green, 1853; Richard P. Marvin, 1855; Noah Davis, Jr., 1857; Martin Grover, 1857; James G. Hoyt, 1860; Charles Daniels, 1863; Richard P. Marvin, 1863; Noah Davis, Jr., 1865; George Barker, 1867; George D. Lamont, 1868; John L. Talcott, 1869; Charles Daniels, 1869; George D. Lamont, 1871; John L. Talcott, 1873; George Barker, 1875; William H. Henderson, 1876; Albert Haight, 1876; Charles Daniels, 1877; Loran L. Lewis, 1882; Thomas Corlett, 1883; Henry A. Childs, 1883; John S. Lambert, 1889; Albert Haight, 1890; Manley C. Green, 1891; Hamilton Ward, 1891; Alfred Spring, 1895; Frank C. Laughlin, 1895; Edward W. Hatch, 1895; John Woodward, 1896; Robert C. Titus, 1896;* Truman C. White, 1896;* Henry A. Childs, 1897; Warren B. Hooker, 1898; Daniel B. Kenefick, 1898; Frederick W. Kruse, 1899; Truman C. White, 1899; Daniel J. Kenefick, 1899; John S. Lambert, 1903; Louis W. Marcus, 1905; Cuthbert W. Pound, 1906; Charles B. Wheeler, 1906; Louis W. Marcus, 1906; Edward K. Emery, 1906; Charles H. Brown, 1906; Frank C. Laughlin, 1909; Alfred Spring, 1909.

Ninth District: Martin J. Keogh, 1895; Michael H. Hirschberg, 1896; S Isaac N. Mills, 1906; Arthur S. Tompkins, 1906; Joseph Morschauser, 1906; Martin J. Keogh, 1909.

Provision was made under the Constitution of 1846 to divide the State into eight judicial districts, for a general term of the supreme court in each of the districts, and for the designation of one of the justices in each district as the presiding judge. This division of the state and the creation of these general terms, each

District pursuant to Chap. 294, Laws of 1906.

^{*}Judge of the former Superior Court of Buffalo, who became a justice of the supreme court on January 1st, 1896, for the remainder of his term, by virtue of Sec. 5, title VI, of the Constitution.

§Justice elected in Second District and continued as justice in Ninth

with a presiding justice rendered the further selection of a chief justice of the State unnecessary and since that time the supreme court has had no such officer.

By an amendment to the judiciary article of the Constitution, adopted in 1867, the number of the general terms was reduced from 8 to 4. The legislature by Chapter 408, Laws of 1870, divided the State into four departments. The number was increased to five by Chapter 329, Laws of 1883, and this division remained until the Constitution of 1894 again required the number of the departments to be reduced to four.

During the time the State was divided into five departments they were made up as follows:

- I. First District.
- 2. Second District.
- 3. Third and Fourth Districts.
- 4. Fifth and Sixth Districts.
- 5. Seventh and Eighth Districts.

The eight judicial districts first erected under the Constitution of 1846 remained without substantial change except those made necessary by the erection of new counties and by some changes in the boundary of counties, until 1906, when the second district was subdivided and the ninth district was created out of a portion of it. (Chap. 294, Laws 1906.)

The judicial districts and departments as now existing under the judiciary law (Sections 70 and 140, Chap. 35, Consolidated Laws 1909) are as follows:

Districts:

- I. County of New York;
- 2. Counties of Kings, Nassau, Queens, Richmond and Suffolk;

- 3. Counties of Columbia, Sullivan, Ulster, Greene, Albany, Schoharie and Rensselaer;
- 4. Counties of Warren, Saratoga, Washington, Essex, Franklin, St. Lawrence, Clinton, Montgomery, Hamilton, Fulton, and Schenectady;
- 5. Counties of Onondaga, Oneida, Oswego, Herkimer, Jefferson and Lewis;
- 6. Counties of Otsego, Delaware, Madison, Chenango, Broome, Tioga, Chemung, Tompkins, Cortland and Schuyler;
- 7. Counties of Livingston, Wayne, Seneca, Yates, Ontario, Steuben, Monroe and Cayuga;
- 8. Counties of Erie, Chatauqua, Cattaraugus, Orleans, Niagara, Genesee, Allegany and Wyoming;
- 9. Counties of Westchester, Putnam, Dutchess, Orange, and Rockland.

Departments:

- 1. County of New York;
- 2. Counties in the second and ninth districts;
- 3. Counties in the third, fourth and sixth districts;
- 4. Counties in the fifth, seventh and eighth districts.

Following is a list of the presiding and associate justices serving in the General Terms from 1870 to December 31, 1895.

First Department.

Presiding Justices: Daniel P. Ingraham, Noah Davis, Charles H. Van Brunt.

Associate Justices: Albert Cardozo, George G. Barnard, William H. Leonard, Noah Davis, Enoch L. Fancher, John R. Brady, Charles Daniels, Charles R. Ingalls, George C. Barrett, Willard Bartlett, Morgan J. O'Brien, David L. Follett and Alton B. Parker.

Second Department.

Presiding Justices: Joseph F. Barnard, and Charles F. Brown. Associate Justices: Jasper W. Gilbert, Abraham B. Tappen, Jackson O. Dykman, Charles F. Brown and Calvin E. Pratt.

Third Department.

Presiding Justices: Theodore Miller, William L. Learned, and Stephen C. Mayham.

Associate Justices: Platt Potter, John M. Parker, Augustus Bockes, Douglass Boardman, Judson S. Landon, Charles R. Ingalls, Stephen L. Mayham, D. Cady Herrick and John R. Putnam.

Fourth Department.

Presiding Justices: Joseph Mullen, John L. Talcott, James C. Smith and George A. Hardin.

Associate Justices: Thomas A. Johnson, John L. Talcott, E. Darwin Smith, James C. Smith, George A. Hardin, Loran L. Lewis, George Barker, David L. Follett, Douglass Boardman, Celora E. Martin and Milton H. Merwin.

Fifth Department, from 1884 to December 31, 1895.

Presiding Justices: James C. Smith, George Barker and Charles C. Dwight.

Associate Justices: George Barker, George B. Bradley, Albert Haight, Charles C. Dwight, F. A. Macomber, Thomas Corlett, Loran L. Lewis and Hamilton Ward.

The general terms were superseded under the Constitution of 1894 by the appellate divisions of the supreme court. The State was divided into four departments as before stated, with an appellate division in each consisting of seven justices in the first, and five in each of the others. It requires four justices to constitute a quorum and the concurrence of three to render a decision. No more than five justices can sit in any case. The

governor designates the justices who shall constitute the appellate divisions and also the presiding justice who shall act as such during his term of office. The associate justices are designated for terms of five years or for the unexpired portions of their respective terms of office, if less than five years.

Following are the justices who have served in the Appellate Divisions and the dates of their designation:

First Department.

Presiding Justices: Charles H. Van Brunt, 1895; redesignated 1897; Morgan J. O'Brien, 1905; Edward Patterson, 1906, and George L. Ingraham, 1910.

Associate Justices: George C. Barrett, 1895; George L. Ingraham, 1895; Edward Patterson, 1895; Morgan J. O'Brien, 1895; Charles C. Dwight, 1895; Pardon C. Williams, 1895; William Rumsey, 1895; Alton B. Parker, 1897; Chester B. McLaughlin, 1897; George C. Barrett, redesignated 1899; Edward W. Hatch, 1900; George L. Ingraham redesignated 1901; Edward Patterson redesignated 1901; Morgan J. O'Brien redesignated 1901; Frank C. Laughlin 1901; Chester B. McLaughlin redesignated 1902; Edward W. Hatch redesignated 1905; John Proctor Clarke, 1905; James W. Houghton, 1905; George L. Ingraham redesignated 1905; Edward Patterson redesignated 1905; Frank C. Laughlin redesignated 1906; Francis M. Scott, 1906; John S. Lambert temporary 1906; Chester B. McLaughlin redesignated 1907 and 1909; Frank C. Laughlin redesignated 1909; Victor J. Dowling, 1910; Nathan L. Miller, 1910.

Second Department.

Presiding Justices: Charles F. Brown, 1895; William W. Goodrich, 1897; Michael H. Hirschberg, 1903.

Associate Justices: Edgar M. Cullen, 1895; Calvin E. Pratt, 1895; Willard Bartlett, 1895; Edward W. Hatch, 1896; George

B. Bradley, 1896; Willard Bartlett, redesignated 1897; John Woodward, 1897; Michael H. Hirschberg, 1900; Almet F. Jenks, 1900; Albert H. Sewell temporary 1901; Warren B. Hooker, temporary 1902; Willard Bartlett, redesignated 1902; John Woodward, redesignated 1902; Warren B. Hooker, 1903; Adelbert P. Rich, temporary 1904; Nathan L. Miller, temporary 1904; Almet F. Jenks, redesignated 1905; William J. Gaynor, 1906, redesignated 1908; John Woodward, redesignated 1908; Joseph A. Burr, 1908; Edward B. Thomas, 1909; William J. Carr, 1910.

Presiding Justices: Charles E. Parker, 1895; redesignated 1901; Walter Lloyd Smith, 1907.

Associate Justices: D. Cady Herrick, 1895; Judson S. Landon, 1895; John R. Putnam, 1895; Milton H. Merwin, 1895; Samuel Edwards, temporary 1896; S. Alonzo Kellogg, temporary 1899; Walter Lloyd Smith, 1899; S. Alonzo Kellogg, 1900; Samuel Edwards, 1900; Emory A. Chase, 1901; Edgar L. Fursman, 1901; Alden Chester, 1902; Walter Lloyd Smith, redesignated 1902; George F. Lyon, temporary 1903; James W. Houghton, 1903; John M. Kellogg, 1905; Aaron V. S. Cochrane, 1905; Albert H. Sewell, 1907; Henry B. Coman, temporary 1907; Alden Chester, redesignated, 1907; James W. Houghton, 1909.

Fourth Department.

Presiding Justices: George A. Hardin, 1895; William H. Adams, 1899; Peter B. McLennan, 1903; redesignated 1907.

Associate Justices: William Rumsey, 1895; David L. Follett, 1895; William H. Adams, 1895; Manley C. Green, 1895; Hamilton Ward, 1896; Peter B. McLennan, 1898; Alfred Spring, 1899; Edwin A. Nash, temporary, 1899; Walter Lloyd Smith, 1899; Frank C. Laughlin, 1900; Pardon C. Williams, 1900; William Rumsey, redesignated 1901; Frank H. Hiscock, 1901; John

M. Davy, temporary 1901; Edwin A. Nash, temporary 1902 and 1903; Martin L. Stover, 1903; Alfred Spring, redesignated 1903; Pardon C. Williams, redesignated 1905; Edwin A. Nash, 1905; Frederick W. Kruse, 1906; James W. Robson, 1907; Alfred Spring redesignated 1909; Pardon C. Williams, redesignated 1909.

The justices now (1910) in office, arranged according to the seniority of their service and with the dates of the expiration of their respective terms of office, are as follows:

First District: George L. Ingraham, 1917; Philip Henry Dugro, 1914; Henry Bischoff, 1917; Leonard A. Giegerich, 1920; Francis M. Scott, 1911; James Fitzgerald, 1912; James A. O'Gorman, 1913; James A. Blanchard, 1915; John Proctor Clarke, 1915; Samuel Greenbaum, 1915; Edward E. McCall, 1916; Edward B. Amend, 1916; Vernon M. Davis, 1916; Victor J. Dowling 1918; Joseph E. Newburger, 1919; John W. Goff, 1918; Samuel Seabury, 1920; M. Warley Platzek, 1920; Peter A. Hendrick, 1920; John Ford, 1920; Charles W. Dayton, 1916; John J. Brady, 1920; Mitchell L. Erlanger, 1920; Charles L. Guy, 1920; James W. Gerard, 1921; Irving Lehman, 1922; Edward B. Whitney, 1910; Nathan Bijur, 1923; Edward J. Gavegan, 1923; Alfred Page, 1923.

Second District: Garret J. Garretson, 1910; Samuel T. Maddox, 1910; Almet F. Jenks, 1912; Josiah T. Marean, 1912; William J. Kelley, 1917; Joseph A. Burr, 1919; Walter H. Jaycox, 1920; Edward B. Thomas, 1918; Joseph Aspinall, 1920; Frederick E. Crane, 1920; Lester W. Clark, 1920; William J. Carr, 1920; Townsend Scudder, 1920; Abel E. Blackmar, 1922; Luke D. Stapleton, 1922; Isaac M. Kapper, 1923; Harrington Putnam, 1910.

Third District: Alden Chester, 1918; Emory A. Chase, 415

1910; James A. Betts, 1912; Aaron V. S. Cochrane, 1915; Wesley O. Howard, 1916; Randall J. LeBoeuf, 1910.

Fourth District: Chester B. McLaughlin, 1923; James W. Houghton, 1914; Edgar A. Spencer, 1915; John M. Kellogg, 1917; Henry T. Kellogg, 1917; Charles C. Van Kirk, 1919.

Fifth District: Pardon C. Williams, 1911; Peter B. Mc-Lennan, 1920; Frank H. Hiscock, 1910; William S. Andrews, 1913; Watson M. Rogers, 1914; Irving R. Devendorf, 1919; Pascal C. J. De Angelis, 1920; Edgar S. K. Merrill, 1923.

Sixth District: Walter Lloyd Smith, 1916; George F. Lyon, 1919; Albert H. Sewell, 1913; Nathan L. Miller, 1918; Albert F. Gladding, 1913; Henry B. Coman, 1920.

Seventh District: Adelbert P. Rich, 1914; James A. Robson, 1918; Nathaniel Foote, 1919; Arthur E. Sutherland, 1919; William W. Clark, 1920; George A. Benton, 1918; Samuel N. Sawyer, 1921.

Eighth District: John S. Lambert, 1917; Alfred Spring, 1921; Frank C. Laughlin, 1923; John Woodward, 1910; Truman C. White, 1910; Warren B. Hooker, 1913; Frederick W. Kruse, 1914; Louis W. Marcus, 1920; Cuthbert W. Pound, 1920; Charles B. Wheeler, 1921; Edward K. Emery, 1920; Charles H. Brown, 1920.

Ninth District: Martin J. Keogh, 1922; Michael H. Hirschberg, 1910; Isaac N. Mills, 1920; Arthur S. Tompkins, 1920; Joseph Morschauser, 1920.

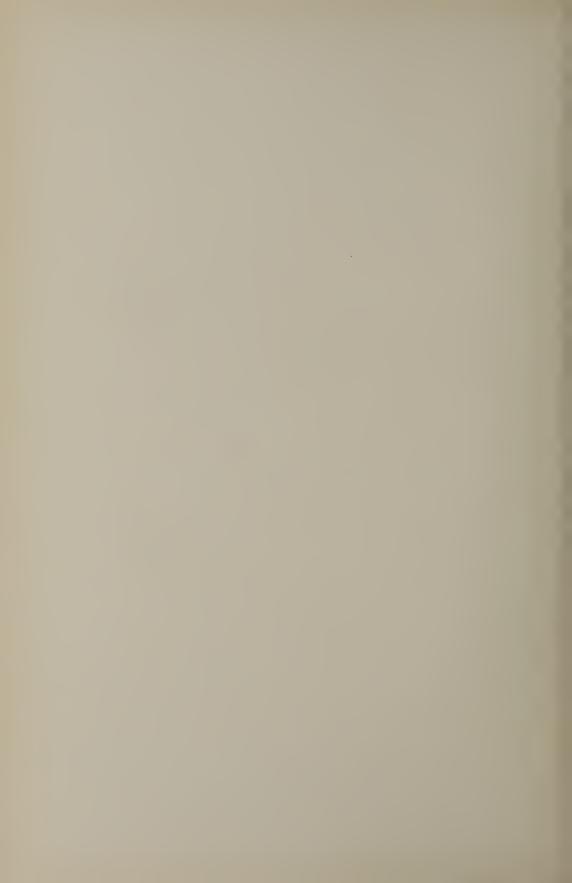
It would add much to the interest of these volumes if extended reference could be made to the lives and the characters of the men who have been called upon to serve upon the bench of the supreme court in former years. Their number is too great, however, to make this feasible. A few names may be barely men-

tioned. John Jay laid aside his robes as chief justice of the supreme court of the State to put on those of the first chief justice of the supreme court of the United States, and in turn laid those aside to become governor of New York. Brockholst Livingston, Smith Thompson, Samuel Nelson and Rufus W. Peckham, all great judges of the State supreme court, afterwards served many years with great credit as associate justices of the supreme court of the United States. James Kent and Reuben H. Walworth, each in turn left the bench of the State supreme court to serve as chancellor, and the scales of justice were never held more evenly or more firmly than by these great equity judges. Morgan Lewis, Daniel D. Thompkins, Joseph C. Yates and William L. Marcy, as well as John Jay, were governors of the State, but each gave years of honorable service upon the bench of the supreme court before coming to the office of chief executive. Space is not afforded to make mention beyond the mere names which we have recorded in this volume of the large number of others who have given the better part of their lives to honorable service as members of this court. Such of them as have served since the decisions of the court have been reported, have their names buried in a few musty tomes upon the shelves of our law libraries, and the names of all are recorded in very fine print on the pages of the civil list of State and Colonial officers. Duty performed in a sphere such as they labored in, is not conducive to enduring fame. Their monument consists of our system of jurisprudence-not perfect by any means, but more nearly so than that upon which they builded, and of our supreme court itself, which largely through their fidelity, impartiality and disinterested service, aided in a considerable degree by the ability of generations of lawyers who have practiced before it, has been perpetuated for

upwards of two hundred years as the highest court of original jurisdiction in the colony and State, and which during all that time has enjoyed the confidence of a law abiding and a law respecting people.

CHAPTER X

On the Threshold of the Twentieth Century



CHAPTER X

On the Threshold of the Twentieth Century

1900-1910

THE BENCH AND BAR OF NEW YORK STARTS ON THE FOUR HUNDRETH YEAR OF ITS HISTORY—FROM SMALL BEGINNINGS TO GREATER THINGS—THE COURT OF CLAIMS—THE ATTORNEY GENERAL AND HIS DUTIES—A LONG LIST OF ABLE ATTORNEY GENERALS—EARLY EDITIONS OF THE LAWS—THE VARIOUS REVISIONS OF THE STATUTES—THE CONSOLIDATED LAWS.

With the beginning of the twentieth century the legal history of New York opens upon its four hundreth year. It is a far cry from the crude execution of primitive laws in the hands of the directors-general early in the seventeenth century to the exhaustive, elaborate and scientific practice of the present day. As the population of New Netherland and New York has grown from a few hundred poor pioneers at the tip end of Manhattan Island to a citizenship of millions, spread over a territory of imperial proportions, so the broad field of legal and judicial procedure has been developed and amplified to meet the changed conditions of the expanded commonwealth. It will be recalled that early in the regime of Director-general Stuyvesant the states general of Holland declined to permit Adriaen Van der Donck to establish himself as a counsellor in New Netherland for the reason that there would be none other to act against him in legal cases. The difference between that time and the present in this respect is strongly accentuated when we consider

that the legal practitioners in New York to-day number up into the thousands while hundreds are being added to their ranks every year. At the same time the judiciary has been greatly increased in numbers and has equally broadened and developed until now it has long been an independent and powerful department of the State government entirely disassociated from the single man rule of the epoch of the early directors.

And with this growth of the profession and of the judiciary there has been a corresponding growth in intellectual strength and in moral uprightness. In the olden times, as a careful perusal of the records will show, the counsellors and attorneys were not always men of probity and uprightness, much less men of education and of intellectual grasp and power. As the correspondence, official accounts and other records show, criticisms of their lack of ability and accusations of dishonesty were not uncommon, and in most cases such criticisms and accusations seem for the most part to have been well deserved. In strength of character, in moral purpose and adherence to honest principles the men of the bar of the Empire State to-day are quite the equals, if not the superiors, of their predecessors of two hundred or three hundred years ago.

Of the judiciary of the twentieth century even more can be said in comparison with those who sat upon the bench in the colonial period of New York. The breath of suspicion rested upon many of the judges from the time of the establishment of the first supreme court with Joseph Dudley as its chief justice under the English regime in 1690, down to the end of the colonial period. Many of the judges were sycophants for royal favor and were willing to sacrifice their independence and their uprightness for the sake of such advancement as could thus be secured. Chief Justice Atwood fled the country to escape ar-

rest for malfeasance in office. Others there were of whom it is not less certainly known that they prostituted their talents and their positions to political or personal gain.

It is not a little remarkable and it is certainly a tribute to the strength of the Democratic institutions that under statehood our judiciary has been distinguished for an ability and an integrity that places it far ahead of that of the colonial period. The present generation will recall but one serious exception to the general high standard of moral uprightness which has ever been a characteristic of the state judiciary. That was during the infamous Tweed regime, when it was found that politics had power to stain the ermine and degrade those to whom the people had entrusted the privilege and the opportunity to care for the public welfare. In this instance, however, only two of our judges fell, and the case constitutes a conspicuous exception to the long record of high moral purpose and purity of action, which has always distinguished the judiciary of the State.

In ability and in usefulness, it is doubtful if the judiciary has ever been on a higher plain than in the opening years of the twentieth century. It has been commented upon and with some show of effectiveness that the great names of the bench have been those of the past; and such men as Chancellor Lansing, Chancellor Kent and Chancellor Walworth, Chief Justice Bronson, Chief Justice Spencer, Chief Justice Nelson, Justice Marcy and others are mentioned in this connection. With the exception of two or three of those men of the past who towered among their associates and whose repute has been the pride of the later generations, it is undoubtedly true that the judges in the closing quarter of the nineteenth century and the opening years of the twentieth century will compare favorably in every respect with those who preceded them a hundred years more or so ago. If they shine with

less distinction, that is probably because they are greater in number and their work more widely diffused and more of an interpretive than of a constructive character. Their individual talents may therefore be less conspicuous, but that their knowledge of law and their ability is in no sense inferior to that of their predecessors should not be doubted for a moment. In learning, in ability, in broad conception of their duties to the people and in acute comprehensive understanding of the issues of the day, the contemporaneous judiciary cannot be surpassed by any of its predecessors, or by any of its present day rivals in other commonwealths. Summarizing the New York bench and bar of today one commentor has thus written:

"In a material view she is indeed the Empire State. It would be arrogating too much to claim for her the Empire in Law. Fortunately for the happiness of mankind, a best jurisprudence does not depend upon material resources or great aggregations of population. But owing to the great men who early formed our jurisprudence, New York has made law not only for herself but for most of the other states of the union. Her judgments and those of Massachusetts have always been the most influential upon the nascent jurisprudence of the younger states. Her adjudications have long been listened to with deference even in the mother country, and this has grown rather than lessened down to this time. Her reforms in procedure alone have entitled her to a marked pre-eminence. She has always been creative in the domain of the law. With a decent conservatism, she has at the same time headed the advances of legal reform and still marches in the van. That the laws which her lawyers have devised, her legislature has enacted and her judges have construed and enforced, are now ruling a large part of the English-speaking world, and have been adopted by our venerable mother country, is a prouder and more durable achievement of our state than all her material glory and power. Her judiciary has been the more numerous than any of the states. They have had the largest and most varied interests to protect and the most intricate legal problems to solve. Great lights have shone from her bench, in every period like beacons visible from afar, illuminating even the shores of foreign lands. In all times the mass of her judges have been just, humane, Godfearing men, of good report, not greedy of gain, not ambitious of power, not anxious for fame; learned in the law, cultivated in letters, untiring in

duty, unswerving from right, passionate lovers of justice and liberty. The names of most of them have been and can be little known to fame, but their work has been a worthy part of the heritage of which the state is proud. Their reward is in her prosperity, glory and happiness."

Jurisdiction to hear and determine such claims against the State, as are authorized by legislation to be heard, is vested in the court of claims. There are three judges, who are appointed by the governor for terms of six years; no more than two members of the court can be practicing attorneys or counsellors of the supreme court. Regular sessions are held in Albany on the second Tuesday of January, April, September and November, and adjourned sessions are held in other parts of the state, whenever occasion requires. In all cases before the court, the attorney general or his deputy attends to represent the State. Records of proceedings are kept and reports are annually made to the legislature. Each judge has a salary of \$8,000. A clerk, a deputy clerk, a stenographer and a messenger are appointed by the judges. The seal of the court is the arms of the State of New York, surrounded by the inscription "State of New York, Court of Claims."

Members of the court since its establishment in 1897 have been Charles T. Saxton, George M. Beebe, John F. Parkhurst, John M. Kellogg, Gilbert D. B. Hasbrouck, Theodore H. Swift, Adolph J. Rodenbeck and Charles H. Murray. Members of the court in 1910 with the dates of their first appointment were: Theodore H. Swift, October 16, 1902; Adolph J. Rodenbeck, November 10, 1903, and Charles H. Murray, December 17, 1904.

The chief law officer of the State is the attorney-general. Egbert Benson was the first one appointed under the Constitution of 1777. At that time, among other things it was the duty of the

^{1. &}quot;The Public Service of the State of New York," edited by Paul A. Chadbourne, D. D., LL.D., and Walter Burritt Moore, vol. III., p. 41.

attorney-general to prosecute criminals in all parts of the State. After the end of the war, the State grew so rapidly in population, that the attorney-general was not able to conduct all the criminal prosecutions, and the office of assistant attorney-general was created in order to relieve him. The State was divided into districts; an assistant attorney-general was appointed in each district, and was directed to conduct the prosecution of all crimes cognizable by the courts of oyer and terminer, jail delivery, and general sessions of the peace. Under the first constitution, the attorney-general was appointed by the council of appointment, but under the second he was appointed by the senate and assembly.

From 1777 until 1845 the attorney-generals were appointees of the governor. Beginning with November, 1847, they have been officers elected at large. It is the duty of the attorney-general to prosecute and defend all actions and proceedings in which the state is interested and have charge of all legal business of the officers and departments of the state, except the military department. In addition to these duties, the attorney-general is a commissioner of the land office and of the canal fund, a member of the canal board, the board of state canvassers, the state board of equalization of assessments, the state printing board, and exofficio member of the state soldiers' and sailors' home, the state board of health and the board of trustees of Union College. In person or by deputy he attends each session of the court of claims on behalf of the State, and prepares all cases on the part of the State for hearing, argues the same when prepared, and causes testimony to be taken when necessary to secure the interests of the state. He prepares forms, files interrogatories and superintends the taking of testimony in the manner prescribed by the court of claims, and generally renders such services as may be necessary to further the interests of the State in all cases before that court,





Thomas Addis Emmet

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THOMAS ADDIS EMMET.

(1764-1827).

Noted lawyer; exile from Ireland; Attorney General, 1812.

and in the appellate division and court of appeals on appeal from awards made by the board of claims. He is elected by the people for a term of two years, receives an annual salary of \$10,000, and a further sum of \$1,600 for his personal expenses, and is allowed a first and second deputy and other necessary deputies and clerks. The seal of the office is the arms of the State, surrounded by the inscription "State of New York—Attorney-General."

Some of the most eminent members of the legal fraternity in the State have held the office. Following is a list of the incumbents with the dates of their appointment or election from the beginning of the State government in 1777: Egbert Benson, 1777; Richard Varick, 1788; Aaron Burr, 1789; Morgan Lewis, 1791; Nathaniel Lawrence, 1792; Josiah Ogden Hoffman, 1795; Ambrose Spencer, 1802; John Woodworth, 1804; Matthias B. Hildreth, 1808; Abraham Van Vechten, 1810; Matthias B. Hildreth, 1811; Thomas Addis Emmett, 1812; Abraham Van Vechten, 1813; Martin Van Buren, 1815; Thomas J. Oakley, 1819; Samuel A. Talcott, 1821; Greene C. Bronson, 1829; Samuel Beardsley, 1836; Willis Hall, 1839; George B. Barker, 1842; John Van Buren, 1845; Ambrose L. Jordan, 1847; Levi S. Chatfield, 1849; Gardner Stow, 1853; Ogden Hoffman, 1853; Stephen B. Cushing, 1855; Lyman Tremain, 1857; Charles G. Myers, 1859; Daniel S. Dickinson, 1861; John Cochrane, 1863; John H. Martindale, 1865; Marshall B. Champlain, 1867; Francis C. Barlow, 1871; Daniel Pratt, 1873; Charles S. Fairchild, 1875; Augustus Schoonmaker, Jr., 1877; Hamilton Ward, 1879; Leslie W. Russell, 1881; Denis O'Brien, 1883; Charles F. Tabor, 1887; Simon W. Rosendale, 1891; Theodore E. Hancock, 1893; John C. Davies, 1898; John Cunneen, 1902; Julius M. Mayer, 1904; William S. Jackson, 1906, and Edward R. O'Malley, 1908.

In the provincial period, as has already been pointed out, the English common law was most in force here. In addition to that were also the enactments of the legislative assembly of the province so far as they were approved by the governor, representing the king. Within the particular territory to which they applied, the laws enacted by this body were as effectual as acts of the parliament in England. The acts of the assembly beginning with the year 1691 have been printed but the collections that have been preserved are very incomplete. In the year 1694, William Bradford, who was then the public printer of the colony, published the laws enacted by the colonial legislature since its first session in 1691. There are few copies of this edition known to be in existence. One is in the library of the Historical Society of Pennsylvania, one in the Library of the New York Society, one in the Public Library of New York City, one in the State Library in Albany, and one in the office of the Secretary of State in Albany. One copy privately owned has been printed in fac-simile by the Grolier Club of New York, under the supervision and editorship of Robert Ludlow Fowler. This reprint is generally referred to as "Fowler's Bradford". The copy in the State library was purchased by the State at the sale of the library of Mr. Brinkley, of Hartford, Connecticut, its former owner, and is referred to in the notes as "Brinkley's Bradford". It contains most of the session laws down to the year 1710, bound in with the original publication of 1694.

After the year 1694, the laws were regularly printed session by session. William Bradford, the official printer, made the pagination of the sheets successive as the laws were struck off. These prints were bound as happened to suit the fancy of those who possessed them, and therefore we find that some of the earlier volumes now extant contain more laws than have been preserved in others.





John Van Buren

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JOHN VAN BUREN.

(1810-1866).

Distinguished Lawyer; Attorney General, 1845-47; son of President Martin Van Buren.

In 1710 the legislature gave directions to Bradford to print all the laws that had been in force "since the arrival of Governor Sloughter." Notwithstanding this the printing still continued to be incomplete and inaccurate, and complaints on this score became more and more frequent and emphatic. In 1741 the general assembly passed an act to "revise, digest and print the laws of the colony". The act which was passed in November of that year, premised that "the laws of this colony, have from time to time been very incorrectly printed and irregularly bound up, which has often occasioned such Difficulties & Inconveniences, That the Legislature do conceive the Revisal of all the Said Laws from the Happy Revolution, and the New Printing of Them in one Body on good Paper, will not only remove the Said Difficulties and Inconveniences, but be of great use and service to the publick."

Daniel Horsmanden, afterwards chief justice, was chosen to execute this work and was directed to collect in one volume exact copies of all laws in force from the time of the Revolution to the end of that session of the general assembly (1741) being a series of about fifty-three years, carefully examining each act with the original and making an index and supervising the printing of the work. For all this service he was to receive two hundred and fifty pounds current money. Horsmanden neglected to do the work thus entrusted to his care, and it has been remarked that he was more interested in drawing up the famous narrative of the so-called negro conspiracy of 1741 and defending his course therein, than he was in making the desired revision of the laws.

^{2.} Livingston and Smith's "Revised Statutes", chapter 721; Van Schaack's "Revised Statutes", chapter 721; "The Colonial Laws of New York", vol. III., p. 192, chapter 721, Laws of 1741.

After this failure of Horsmanden, the matter came before the general assembly again in 1750. By an act passed in November of that year³ William Livingston and William Smith, Jr., were appointed to undertake the revision and James Parker was appointed to print the work. This act also recited that the laws had from time to time been very incorrectly printed and irregularly bound up. It was provided that Livingston and Smith shall receive the sum of two hundred and eighty pounds for their services, and James Parker should be paid at the rate of twenty shillings "for every sheet of Paper in the said Printed Book."

By 1752, Livingston and Smith had completed the first volume of their work and it was published, including the colonial laws then in force, enacted by the colony from 1691 to 1751. In the year 1762, the same editors published the colonial laws enacted since 1751 down to and including the twentysecond day of May, 1762. The revisors announced that in their final work they had omitted many acts which could not be found and they criticised the earlier editions of the laws for containing "acts which have been practiced upon that were never passed by the whole legislature", and at the same time omitting others that had been duly passed. The bad condition of the printed laws, was considerably due to the fact that after the acts had been passed by the general assembly and printed, the crown had the power of rejecting them after examination, and did so reject many of them. In 1753 the lords of justice of England recommended a codification of all the laws of New York, but the assembly rejected the proposition on account of the expense already incurred in the Livingston and Smith revision.

^{3.} Livingston and Smith's "Revised Statutes", chapter 907; Van Schaack's "Revised Statutes", chapter 907; "The Colonial Laws of New York", vol. III., p. 832, chapter 907, Laws of 1750.

In 1772 the general assembly passed another act for revision of the laws of the colony. In the preamble of that act it was set forth that "the laws of this colony are at present irregularly bound up, not properly digested, which often occasions difficulties and inconveniences, it is therefore conceived necessary that all the Laws from the happy Revolution down to the End of the Present Session, should be revised and digested, and that the same be new printed on good paper and bound in one or more Volumes of a suitable size." Peter Van Schaack was appointed to do the work of revision and to be paid therefor the sum of two hundred and fifty pounds. It was further provided that the work should be printed by Hugh Gaine. This revision contained all the laws in the Livingston and Smith work, and in addition the acts passed between 1753 and March 8, 1773.

The subsequent laws of 1774 and 1775 were published by Hugh Gaine, the public printer, and copies of this publication are in various libraries, public and private.

All of the foregoing colonial editions contained the full text of the laws in force at the date of publication, acts that had expired being referred to by title only. As it was the custom to enact laws for a limited period, many important acts expired before any publication of the laws was made, and as a result all early publications of the colonial laws contain a comparatively small proportion of the colonial legislation.

In 1891⁵ the legislature directed the statutory revision commission to republish verbatim, preserving the original spelling and punctuation, the statutes of the colony, from the foundation there-

^{4.} Van Schaack's "Revised Statutes", chapter 1543; "Colonial Laws of New York", vol. V., p. 355, chapter 1543, Laws of 1772.

^{5.} Chapter 125, Laws of 1891.

of to the adoption of the first constitution. The commission took the edition of Van Schaack as a basis of this publication, so far as the arrangement and the chapter numbering were concerned. Every act, however, of which the original or a copy was known to be in existence, was printed in full. These were published in 1894 by the State in five volumes, under the title of "The Colonial Laws of New York."

Immediately upon the assurance of Independence, activity in new legislation began in the State legislature, and continued at a rapid pace for many years thereafter. Naturally the change in the form of government made this an imperative matter. Also the temper of the people at that time in opposition to anything that savored of the former monarchial control of the colony, had the strongest influence in developing legislation, which should meet the common desire for emancipation in every way possible from all that had controlled heretofore. The attainder of estates was advocated and the entail converted into fee simple. The law of primogeniture was abolished and alterations were made in the canon of descents so as to conform to democratic rather than monarchial institutions as they had been before. The immunities, emoluments and privileges accorded to the Church of England in New York were repealed in accord with the new principle of the separation of church from state. In these acts was involved the abrogation of the principle that all the inhabitants should pay taxes for the support of the established church. Other laws governing the colony were repealed or altered in order to make them consistent with the newly established democratic ideas. These changes, many and vital, brought out in a very few years the imperative necessity of revising the laws so that there should be a fixed code clearly conforming to the new order of things.

Consideration was duly given to this revision, and the first





Richard Varick

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RICHARD VARICK.

(1753-1831).

Lawyer and Soldier; Recorder of New York, 1783-89; Attorney General of State, 1788; Mayor of New York, 1791-1801; Reviser of Statutes with Samuel Jones.

act relating to it was passed on the fifteenth day of April, 1786. The preamble of the act calls attention to the declaration in the Constitution of the State that certain parts of the law of England and the colony of New York continued to be the law of the State, and that "such of said statutes as have been generally supposed to extend to the late colony of New York and to this State are contained in a great number of volumes, and such statutes as well as the acts of the legislature of the late colony, are conceived in a style and language improper to appear in the statute-books of this State." Samuel Jones and Richard Varick were chosen to do the work of collecting and revising the laws. Each compiler was allowed a yearly salary of £400, and the work was to be completed within two years.

Samuel Jones was a celebrated New York lawyer of the Revolutionary period, a son of William Jones, a respected lawyer of the early colonial bar, and a nephew of Judge Thomas Jones, of the colonial supreme court. He was a loyalist, but not active during the Revolution. After the war he was a member of the State assembly and State senate, and his name became memorable by his connection with the first revision of the statutes of the State.

Richard Varick, associated with Samuel Jones in this revision, was a native of New Jersey, where he was born in 1753. He practiced law in New York before the outbreak of the Revolution, but during the war served as military secretary to General Philip Schuyler, as aide-de-camp to General Benedict Arnold, and was a member of Washington's staff. After the war he served as recorder of the city of New York from 1783 to 1789, and as mayor from 1791 to 1801. He was attorney general of the State in 1788-9. Later years of his life he passed in retirement and he died in Jersey City in July, 1831.

In some respects this first State revision was the most im-

portant that had yet been completed in New York, and it far exceeded in scope and in value anything that had been attempted under the colonial government. It was proposed to examine the entire statute law of England and the province, and with the revision completed, to cause all other statutes in New York to forever cease to be operative. As the revisers progressed in their work, they reported from time to time to the legislature, and the bills which they advised were generally adopted by the legislature and the council of revision which had general charge of this work. When the work of recasting and re-enacting the necessary English statutes had been completed, the legislature in 1788 passed an act declaring that after May of the following year "none of the statutes of England or of Great Britain shall operate or be considered as laws of the State." This revision eventually determined what parts of the statutes of England and Great Britain should be continued under the State order of affairs. So far as acts of the provincial assembly were concerned the revisers did not accomplish this work, although the act directing the revision contemplated that. It was not until fifty years later that all the acts of the assembly of the province were finally repealed. Some of them were recommended for repeal by the revisers of 1787 and 1789, and the legislature acted accordingly. But the greater number of them still remained operative. The Jones-Varick revision was the only comprehensive digest of the laws of New York down to 1800. Nevertheless few changes were made in the laws as they existed prior to the Revolution. Therefore the laws under the State government remained practically as they had before existed.

A second revision practically following the work of Messrs. Jones and Varick was a private venture undertaken by Thomas Greenleaf. It had no legislative sanction, but it was capably done

and went into a second edition; as it was recognized by the courts it was practically accepted as authoritative.

By act of the legislature of 1801 another revision of the laws was directed to be undertaken by James Kent and Jacob Radcliffe.6 Two years were given to them in which to do the work, and an allowance of \$1,000 each was made for their services. The revision of Kent and Radcliffe was printed in 1802 in two octavo volumes, by Charles R. and George Webster, Albany.

In 1813 the revision of Kent and Radcliffe was superseded by the revision undertaken by William P. Van Ness and John Woodworth, by authority of an act of the legislature of 1811. The act7 authorizing this revision directed the revisors to arrange the laws of a general and permanent nature systematically in divisions under the proper headings, with such marginal notes as might appear to be desirable for public information.

As the revision of Jones and Varick was the first of the State revisions in the point of time, so that of Van Ness and Woodworth was facile princeps in point of method and arrangement; the marginal notes, prepared by John V. N. Yates, and included in the revision of 1813, are among the most valuable expositions of the laws of this State; they oftentimes, by enumerating the various English and colonial acts which contained like provisions, embraced a succinct history of the statutes to which they refer. Even at the present time the history of many of the legislative measures may be more easily gathered from this revision than from any other single work, and it remains a profound example of faithful professional service.8

^{6.} Chapter 190, Laws of 1801.
7. Chapter 150, Laws of 1811.
8. "Constitutional and Legal History of New York in the Nineteenth Century", by Robert Ludlow Fowler, in "The Memorial History of the City of New York," vol. III., p. 630.

After the adoption of the second constitution in 1821, the necessity of a new edition of the laws pressed itself upon public attention. In 1823 and again in 1824, Governor Yates, who had been a justice of the supreme court for fourteen years, specifically called the attention of the legislature to the condition of things. Many changes had been made in the laws by the new constitution, and the statute book, as it then existed, set these forth very inadequately and in very confused manner. In 1823 the legislature passed an act providing for this revision.⁹

Those who were selected to do the work were Chancellor James Kent, Erastus Root, the lieutenant-governor, and Benjamin F. Butler, who was then a young lawyer, associated with Martin Van Buren, and who was afterwards attorney-general of the United States under President Jackson. Among other things the revisers were authorized and directed to collect and reduce into proper form all the acts of the legislature then in force, omitting all of the acts repealed and reducing all various acts upon the same subject to acts of one chapter each. Practically, like the revisions that had preceded it in 1802 and 1812, this revision was to be little more than an orderly arrangement of the statutes then in force, properly indexed. Two years were allowed for the completion of the work.

Chancellor Kent declined to act as one of the revisers and John Duer was appointed in his place. Messrs. Duer and Butler were not at all in sympathy with their colleague, Mr. Root, and the revision proceeded for a time along divided lines. Finally Messrs. Duer and Butler succeeded in having a bill passed by the legislature¹⁰ giving wider scope to their work and substi-

^{9.} Chapter 336, "Laws of 1824."
10. Chapter 324, "Laws of 1825."

tuting the name of Henry Wheaton for that of Erastus Root.

In the new plan which they proposed, the revisers contemplated not only a reduction of all laws on the same subject into chapters, but also an entirely new arrangement of the statutes then existing, to the end that the statutes should be lessened in number and made more precise, simple, and free from obscurities, so as to generally simplify the acquisition of knowledge of the science of law. The act of 1825 amending the bill of 1824 was like those which authorized the preceding revisions, and was calculated to cover the collection and revision of all public acts in force at the end of the fortieth legislative session in 1825. Power was conferred upon the revisers to complete the revision in such a manner as might seem to them desirable in order to make the revised acts more plain and more easy to be understood.

In the year 1826, the revisers mapped out more completely their plan and classified the statutes to be revised. They finally determined upon dividing the work into five principle divisions as follows: The first part to contain those acts which related to the territory, the political division, the civil polity, and the internal administration of the State; the second part those acts which related to real and personal property, the domestic relations, and to all matters generally connected with private rights; the third part to contain the statutes relating to the judicial branch of the government and to procedure in civil cases; the fourth part to be concerned with the statutes relating to crimes and punishments, to the mode of procedure in criminal cases, and to prison discipline; and the fifth part with the laws relating to cities, villages and other corporations, and miscellaneous public laws.

LEGAL AND JUDICIAL

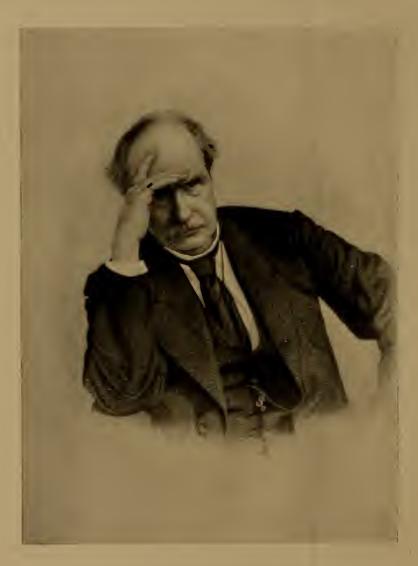
While this work was in progress, Mr. Wheaton, in 1827, was sent as chargé d'affaires of the United States to Denmark, and Mr. John C. Spencer was appointed to his place. The first part of the revision as completed was the united work of Messrs. Butler, Duer, Wheaton and Spencer, but the remaining parts were accomplished by Messrs. Butler, Duer and Spencer. To these three men last mentioned is due that revision of the statute laws of the State which has lasted for upwards of three-quarters of a century. The revision was considered at the general and special sessions of the legislature for two years. It was adopted and went into effect January 1, 1828, May 1, 1828, and January 1, 1830.

By the legislative act of 1830¹¹ it was provided that any person might publish the revised statutes, and that the work so published might be accepted in evidence if accompanied with the certificate of the secretary of state or two of the revisers. Under this law several editions of the revised statutes, unofficial and private enterprises, have been published from time to time. The revisers of 1827-1828 published another edition in 1836 and a third edition in 1846-1848. In these editions they incorporated all the new legislation which had been enacted since 1830.

Another edition was prepared by Hiram Denio and William Tracy, and published in 1852. The editors of this edition made some radical changes, going so far as to alter the text of various provisions of the revised statutes and other former statutes, so as to have them conform to the new state of things under the Constitution of 1846, which had made many important and sweeping alterations in the constitution and laws of the State. A fifth

^{11.} Chapter 259, "Laws of 1830."





David Dudley Field

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DAVID DUDLEY FIELD.

(1805-1894).

Eminent Lawyer, Reformer and Codifier; principal author of New York Code of Procedure, and of political, civil and penal codes.

edition of the revised statutes was prepared by Amasa J. Parker, George Wolford and Edward Wade, and was published in 1859. No other edition appeared for nearly twenty years, when a work prepared by George W. Cothran was published in 1875. Seven years later, in 1882, came a seventh edition edited by Montgomery H. Throop, and the same editor published another edition in 1889.

The constitutional convention of 1846 recognized the necessity of a systematic code of legal practice, and to that end provided that commissioners should be appointed "to revise, reform, simplify and abridge the rules of practice pleadings, forms and proceedings of the courts of record." In accordance with this provision of the constitution, the legislature appointed as commissioners Arphaxed Loomis, David Graham and David Dudley Field. These gentlemen prepared the instrument known as the New York Code of Procedure, or the "Field Code," which was adopted in 1848, and, with its amendments, modifications and additions, still forms our law of practice and procedure, and the principles of which have been adopted in many other of our States and in England, to a greater or less extent.

There was also a provision in the Constitution of 1846 for the appointment of three commissioners "whose duty it shall be to reduce into a written and systematic code the whole body of the law of this State, or so much, and such parts thereof as to the said commissioners shall seem practicable and expedient." Under this a commission was appointed but a number of changes in the personnel thereof took place from time to time. During the time the commission consisted of David Dudley Field, William Curtis Noyes and Alexander Bradford, several reports were made to the legislature, which included the draft of a "Political Code," a "Civil Code," and a "Penal Code." The final report was

LEGAL AND JUDICIAL

submitted in 1864. In this the commissioners say:—"The Codes which the Commissioners have thus prepared, together with the Codes of Civil and Criminal Procedure, heretofore submitted by the Commissioners on Practice and Pleadings, complete that work of codification which was contemplated by the constitution of 1846, and when the same shall have been considered and sanctioned by the Legislature, the people of the State of New York will have the whole body of their laws in a written and systematic form."

None of these three codes reported by this commission was, however, adopted by the legislature.

The command of the constitution relating to the codification of the body of the law had resulted simply in the enactment of the "Code of Procedure." The judiciary article of the constitution adopted in 1869 omitted this command, but the legislature in 1870¹² passed an act providing for a new revision of the statutes. Under this act Governor Hoffman appointed Francis Kernan, Judge Amasa J. Parker, and Montgomery Throop as commissioners. Mr. Kernan declined to serve and Nelson J. Waterbury was appointed in his stead. These gentlemen differed greatly in opinion as to the general principles upon which their work should be performed, and majority and minority reports were presented to the legislature. Judge Parker resigned and Charles Stebbins was appointed to the vacancy. Afterwards Mr. Waterbury retired and Jacob I. Werner was appointed in his place. The commission, now consisting of Messrs. Throop, Stebbins and Werner, went on with the work which mainly related to the courts and officers of justice and to proceedings in civil cases. At the time their first report was presented, in which Mr. Stebbins did not join, Mr. Throop announced the resignations of Mr.

^{12.} Chapter 33, Laws of 1870.

Stebbins and Mr. Werner. Governor Tilden filled the vacancies by appointing Alexander S. Johnson and Sullivan Caverno. commission as thus constituted presented to the legislature of 1876 the first thirteen chapters of what was called "The Code of Remedial Justice." This was enacted and the name was afterwards changed to the "Code of Civil Procedure." Judge Johnson retired from the commission the same year and Judge James Emott was appointed in his place; but before any more of their work was enacted into law the term of the commissioners expired. The only result of thirty years of effort to carry out the requirements of the Constitution of 1846 was the Code of Procedure, which was largely the work of David Dudley Field, and which was superseded by the first thirteen chapters of the Code of Civil Procedure which was in the main compiled by Montgomery H. Throop. In 1880, nine additional chapters, largely prepared by Mr. Throop, were added by the legislature to the Code of Civil Procedure.14

In 1881 the Code of Criminal Procedure and the Penal Code prepared many years before by David Dudley Field, and which had been carefully revised by a commission consisting of Mr. Field, Judge Emott and Benjamin K. Phelps, ex-district attorney of New York, and later by Judge Emott, Mr. Phelps and Augustus Schoonmaker, ex-attorney general, were enacted by the legislature and became part of the law of the State.15

A new effort was made at revision in 1889. By Chapter 289 of the laws of that year, the governor was authorized to appoint a commission of three to consolidate and revise the general statutes of the State. Governor Hill, pursuant to this authority,

^{13.} Chapter 416, Laws 1877.
14. Chapter 178, Laws of 1880.
15. Chapter 442, Laws of 1881 and Chapter 676, Laws of 1881.

LEGAL AND JUDICIAL

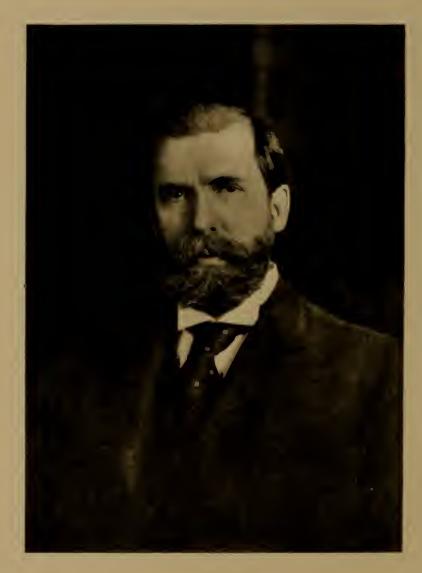
appointed Isaac H. Maynard, Charles A. Collin and Eli C. Belknap as commissioners. They entered upon their labors in June of that year, and the commission continued in existence until 1900. During portions of that time, besides those named, Daniel Magone, John J. Linson, Charles Z. Lincoln, William H. Johnson and A. Judd Northrup served upon the commission, and its labors resulted in the enactment of forty-eight general laws and the presentation to the legislature of forty-nine other bills in completion of its plan of revision. All but four of the bills so presented failed to pass. The legislature in that year passed an act (Chapter 664) which abolished the Statutory Revision Commission and left its work incompleted.

The subject was subsequently considered by various legislative committees, and in 1904 the legislature passed an act creating a board of Statutory Consolidation consisting of Adolph J. Rodenbeck, Charles Andrews, Judson S. Landon, William B. Hornblower and John G. Milburn, "to direct and control the revision, simplification, arrangement and consolidation of the statutes of the State." ¹⁸

Judge Andrews declined to serve and Governor Odell appointed Adelbert Moot in his place. The board organized by the selection of Judge Rodenbeck as chairman and Frederick E. Wadhams as secretary. Judge Landon died soon after and his place never was filled. The work was carried on to a completion by the other members of the board. Under the law they were required to follow the plan adopted in the general laws so far as practicable, and the statutes were "not to be changed in substance." The report of the board was made to the legislature of 1908. It proposed for enactment sixty-one "Consoli-

^{16.} Chapter 664, Laws of 1904.





Charles E. Hughes

CHARLES E. HUGHES.

(1862--).

Lawyer and Jurist; Professor of Law, Cornell University, 1893-95; Special Lecturer New York Law School, 1893-1900; Counsel to Legislative Committee, Gas investigation, 1905, and Insurance investigation, 1905-6; Governor, 1907-10; Associate Justice United States Supreme Court, 1910—.

dated Laws," that term being used to distinguish the new statutes from the "Revised Acts of 1801," the "Revised Laws of 1813," the "Revised Statutes of 1830," and the "General Laws of 1889-1900."

All the laws so proposed were enacted by the legislature of 1909, except the Public Service Commissions Law and the Railroad Law. They included the "Penal Code," with its name changed to the "Penal Law." In performing its work the board removed the substantive provisions of the Code of Civil Procedure and distributed them among the various consolidated laws, the larger portion of which was inserted in the new judiciary law, embracing matters relating to the courts and their officers, and the Code of Civil and Criminal Procedure were amended generally to conform to the plan proposed by the board.

The Public Service Commission's Law and the Railroad Law which failed of passage in 1909 was each passed in 1910 and became a part of the Consolidated Laws.

The enactment by the legislature of all but two of the laws proposed by the board, and the subsequent enactment of these two, has brought the statutes of the State out from the chaotic condition in which they have been for many years, and, for the first time since the Revised Statutes of 1830, our statutory laws are arranged in a systematic and accessible form.

The labors of the board in preparing and the action of the legislature in enacting these laws have met the general approval and commendation of the bench and bar of the State.



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